

AS OF OCTOBER 2001

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NEW JERSEY STATUTES

CHAPTER 1

GENERAL PROVISIONS

ARTICLE 1. GENERAL PROVISIONS RELATING TO ALL PROFESSIONS AND OCCUPATIONS AFFECTED BY THIS SUBTITLE

45:1-1. Persons entitled to practice, etc. under former laws unaffected

Any person now entitled to practice any profession or to engage in any occupation, governed or regulated by the provisions of this title by virtue of any prior law, shall continue to be entitled to practice or engage in the same, notwithstanding the enactment of this title, and the validity of any license or other authorization to practice any such profession or to engage in any such occupation, heretofore issued to any person under any prior law, or of any proceeding pending to obtain such a license or authorization shall not be affected by the enactment of this title but all such persons shall in all other respects be subject to the provisions of this title.

ARTICLE 2. GENERAL PROVISIONS RELATING TO CERTAIN STATE BOARDS OF REGISTRATION AND EXAMINATION

45:1-2. Repealed by L.1971, c. 60, § 5, eff. March 25, 1971

45:1-2.1. Professional boards and commissions; application of act

The provisions of this act shall apply to the following boards and commissions: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the New Jersey Real Estate Commission, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, the Radiologic Technology Board of Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, the State Board of Social Work Examiners, and the State Board of Public Movers and Warehousemen.

45:1-2.2. Appointment of members by governor; public members; member from department in executive branch; quorum; vote necessary for action

a. All members of the several professional boards and commissions shall be appointed by the Governor in the manner prescribed by law; except in appointing members other than those appointed pursuant to subsection b. or subsection c., the Governor shall give due consideration to, but shall not be bound by, recommendations submitted by the appropriate professional organizations of this State.

b. In addition to the membership otherwise prescribed by law, the Governor shall appoint in the same manner as presently prescribed by law for the appointment of members, two additional members to represent the interests of the public, to be known as public members, to each of the following boards and commissions: The New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic

Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the New Jersey Real Estate Commission, the State Board of Shorthand Reporting, the State Board of Social Work Examiners, and the State Board of Veterinary Medical Examiners, and one additional public member to each of the following boards: the Board of Examiners of Electrical Contractors, the State Board of Marriage and Family Therapy Examiners, the State Board of Examiners of Master Plumbers, and the State Real Estate Appraiser Board. Each public member shall be appointed for the term prescribed for the other members of the board or commission and until the appointment of his successor. Vacancies shall be filled for the unexpired term only. The Governor may remove any such public member after hearing, for misconduct, incompetency, neglect of duty or for any other sufficient cause.

No public member appointed pursuant to this section shall have any association or relationship with the profession or a member thereof regulated by the board of which he is a member, where such association or relationship would prevent such public member from representing the interest of the public. Such a relationship includes a relationship with members of one's immediate family; and such association includes membership in the profession regulated by the board. To receive services rendered in a customary client relationship will not preclude a prospective public member from appointment. This paragraph shall not apply to individuals who are public members of boards on the effective date of this act.

It shall be the responsibility of the Attorney General to insure that no person with the aforementioned association or relationship or any other questionable or potential conflict of interest shall be appointed to serve as a public member of any board regulated by this section.

Where a board is required to examine the academic and professional credentials of an applicant for licensure or to test such applicant orally, no public member appointed pursuant to this section shall participate in such examination process; provided, however, that public members shall be given notice of and may be present at all such examination processes and deliberations concerning the results thereof, and, provided further, that public members may participate in the development and establishment of the procedures and criteria for such examination processes.

c. The Governor shall designate a department in the Executive Branch of the State Government which is closely related to the profession or occupation regulated by each of the boards or commissions designated in section 1 of P.L.1971, c. 60 (C. 45:1-2.1) and shall appoint the head of such department, or the holder of a designated office or position in such department, to serve without compensation at the pleasure of the Governor as a member of such board or commission.

d. A majority of the voting members of such boards or commissions shall constitute a quorum thereof and no action of any such board or commission shall be taken except upon the affirmative vote of a majority of the members of the entire board or commission.

45:1-2.3. Qualifications; rights and duties

Such additional members:

a. Need not meet the educational and professional requirements for membership on such boards or commissions as provided in the several statutes establishing such boards and commissions; and

b. Shall be voting members subject to the same rights, obligations and duties as other members of their respective boards or commissions.

45:1-2.4. Effect of act on term of member in office

Nothing in this act shall affect the right of a board or commission member in office on the effective date of this act to continue to serve for the term for which he was appointed.

45:1-2.5. Compensation and reimbursement of expenses of members; executive secretaries; compensation and terms of employment; offices and meeting places

With respect to the boards or commissions designated in section 1 of P.L.1971, c. 60 (C.45:1-2.1), except as otherwise provided in subsection d. of this section, and notwithstanding the provisions of any other law:

a. The officers and members shall be compensated on a per diem basis in the amount of \$25.00 or an amount to be determined by the Attorney General, with the approval of the State Treasurer, but not to exceed \$100.00 per diem or \$2,500.00 annually, and shall be reimbursed for actual expenses reasonably incurred in the performance of their official duties. Such moneys shall be paid according to rules and regulations promulgated by the Attorney General.

b. The executive secretary shall receive such salary as shall be determined by the appointing authority within the limits of available appropriations and shall serve at its pleasure. Any such executive secretary who holds a certificate, license or registration issued by the board or commission by which he is employed shall not during such employment be permitted to engage in any profession or occupation regulated by the board or commission.

c. The head of the department to which such board or commission is assigned shall maintain within any public building, whether owned or leased by the State, suitable quarters for the board's or commission's office and meeting place, provided that no such office or meeting place shall be within premises owned or occupied by an officer or member of such board or commission.

d. The compensation schedule for members of boards and commissions provided in subsection a. of this section shall not apply to the members of the New Jersey Real Estate Commission, who shall be compensated pursuant to R.S.45:15-6 or to members of the State Board of Medical Examiners who shall receive compensation of \$150 per diem.

45:1-2.6. Inapplicability of act to rights under civil service or any pension law or retirement system

Nothing in this act shall deprive any person of any tenure rights or of any right or protection provided him by Title 11 of the Revised Statutes, Civil Service, or any pension law or retirement system.

45:1-3. Expenses of boards paid from income; surplus paid to state treasurer; accounts

Each member of the boards mentioned in section 45:1-2 of this title shall be entitled to his actual traveling and other expenses incurred in the performance of his duties, which sum shall be paid from the license fees and other sources of income of such boards. Such boards shall also be entitled to expend from their income such sums as shall be necessary to defray all proper expenses incurred by them in the performance of their duties, including the compensation of any of their officers or agents whom they are authorized to compensate. Such boards, if authorized to collect an annual registration or license fee from persons licensed by them, may retain in their treasuries the fees so collected and use the same for the purpose of defraying the expenses of securing evidence against and prosecuting persons violating the provisions of the laws with the enforcement of which they are charged, or, in case the revenue of the boards from other sources shall be insufficient to pay the salary of their secretaries and their other expenses, such fees may be expended for such purposes. Such boards shall be entitled to retain, in addition to the above, at least one hundred dollars in their treasuries for the purpose of preparing and holding their examinations. On or before October thirty-first in each year such boards shall pay to the state treasurer all moneys remaining in their treasuries, except as above stated, which sum, when so paid, shall form a part of the state fund. Such boards shall keep accurate accounts of their receipts and expenditures, which accounts shall be subject to audit by the state comptroller.

45:1-3.1. Application of act

The provisions of this act shall apply to the following boards and commissions: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, the Radiologic Technology Board of Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, and the State Board of Social Work Examiners.

45:1-3.2. Charges for examinations, licensures and other services; establishment or change by rule; standards

Notwithstanding the provisions of Title 45 of the Revised Statutes or any other law to the contrary, any board or commission named in section 1 of this supplementary act may by rule establish, prescribe or change the charges for examinations, licensures and other services it performs, which rule shall first be approved by the head of the department to which such board or commission is assigned and shall be adopted in accordance with the provisions of the “Administrative Procedure Act,” P.L.1968, c. 410 (C. 52:14B-1).

Any board’s or commission’s charges established, prescribed or changed pursuant to this section shall be established, prescribed or changed to such extent as shall be necessary to defray all proper expenses incurred by the board or commission in the performance of its duties but such charges shall not be fixed at a level that will raise amounts in excess of the amount estimated to be so required.

45:1-3.3. Administrative fees charged by boards; modification

The Director of the Division of Consumer Affairs may by rule establish, prescribe, or modify administrative fees charged by boards in accordance with the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.). For purposes of this section, “administrative fees” are charges assessed to licensees, registrants or holders of certificates, as the case may be, for board functions that are not unique to a particular board but are uniform throughout all boards. Administrative fees include, but are not limited to, fees for a duplicate or replacement license, certification or registration, late renewal fee, license reinstatement fee, and the fee for processing change of address.

45:1-4. Salary of secretary

The secretary of each of the boards mentioned in section 45:1-2 of this title, whether or not a member thereof, shall be entitled to receive such reasonable salary or compensation for his services as secretary as shall be fixed by such boards, which shall be paid by the boards from their receipts, unless an appropriation is made for the expenses of such boards, in which case the same shall be paid from such appropriation.

45:1-5, 45:1-6. Repealed by L.1979, c. 432, § 4, eff. Feb. 14, 1980

45:1-7. Professional or occupational licenses or certificates of registration; duration; expiration; exceptions; fees

Notwithstanding any of the provisions of Title 45 of the Revised Statutes or of any other law to the contrary, all professional or occupational licenses or certificates of registration, except such licenses or certificates issued to real estate brokers or salesmen pursuant to chapter 15 of Title 45, which prior to the effective date of this act were issued for periods not exceeding one year and were annually renewable, shall, on and after the effective date of this act, be issued for periods of two years and be biennially renewable, except that licenses and business permits issued to electrical contractors pursuant to chapter 5A of Title 45 shall be issued for periods of three years and be triennially renewable; provided, however, the boards or commissions in charge of the issuance or renewal of such licenses or certificates may, in order to stagger the expiration dates thereof, provide that those first issued or renewed after the effective date of this act, shall expire and become void on a date fixed by the respective boards or commissions, not sooner than six months nor later than 29 months, after the date of issue.

The fees for the respective licenses and certificates of registration issued pursuant to this act for periods of less or greater than one year shall be in amounts proportionately less or greater than the fees established by law.

45:1-7.1. Application to holders of professional or occupational licenses

a. Notwithstanding any other act or regulation to the contrary, the provisions of this section and sections 6 and 7 of P.L.1999, c. 403 (C.45:1-7.2 et al.) shall apply to every holder of a professional or occupational license or certificate of registration or certification issued or renewed by a board specified in section 2 of P.L. 1978, c. 73 (C.45:1-15), who seeks renewal of that license or certificate.

b. Every holder of a professional or occupational license or certificate of registration or certification, issued or renewed by a board specified in section 2 of P.L.1978, c. 73 (C.45:1-15), who seeks renewal shall submit a renewal application and pay a renewal fee prior to the date of expiration of the license or certificate of registration or certification. If the holder does not renew the license or certificate prior to its expiration date, the holder may

renew it within 30 days of its expiration date by submitting a renewal application and paying a renewal fee and a late fee. Any professional or occupational license or certificate of registration or certification not renewed within 30 days of its expiration date shall be suspended without a hearing.

c. Any individual who continues to practice with an expired license or certificate of registration or certification after 30 days following its expiration date shall be deemed to be engaged in unlicensed practice of the regulated profession or occupation, even if no notice of suspension has been provided to the individual.

d. A professional or occupational license or certificate of registration or certification suspended pursuant to this section may be reinstated within five years following its date of expiration upon submission of a renewal application and payment of an additional reinstatement fee. An applicant seeking reinstatement of a license or certificate suspended pursuant to this section more than five years past its expiration date shall successfully complete the examination required for initial licensure, registration or certification and submit a renewal application and payment of an additional reinstatement fee.

e. A board specified in section 2 of P.L. 1978, c. 73 (C. 45:1-15) shall send a notice of renewal to each of its holders of a professional or occupational license or certificate of registration or certification, as applicable, at least 60 days prior to the expiration of the license or certificate. If the notice to renew is not sent at least 60 days prior to the expiration date, no monetary penalties or fines shall apply to the holder for failure to renew.

45:1-7.2. Reinstatement

A board may reinstate the professional or occupational license or certificate of registration or certification of an applicant whose license or certificate has been suspended pursuant to section 5 of P.L.1999, c. 403 (C.45:1-7.1), provided that the applicant otherwise qualifies for licensure, registration or certification and submits the following upon application for reinstatement:

- a. Payment of all past delinquent renewal fees;
- b. Payment of a reinstatement fee;
- c. An affidavit of employment listing each job held during the period of suspended license, registration or certification which includes the names, addresses, and telephone numbers of each employer; and
- d. If applicable, satisfactory proof that the applicant has maintained proficiency by completing the continuing education hours or credits required for the renewal of an active license or certificate of registration or certification.

45:1-7.3. Renewal applications

a. Renewal applications for all professional or occupational licenses or certificates of registration or certification shall provide the applicant with the option of either active or inactive renewal. A renewal applicant electing to renew as inactive shall not engage in professional or occupational practice within the State.

b. An applicant who selects the inactive renewal option shall remain on inactive status for the entire renewal period unless, upon application to the board, the board permits the inactive applicant to return to active status provided such applicant presents satisfactory proof that he has maintained proficiency by completing the continuing education hours or credits required for the renewal of an active license, registration or certification, if applicable.

45:1-8. Contractors; application of § 45:1-9

The provisions of this act apply to the following classes of contractors:

- a. Tree experts, certified pursuant to P.L.1940, c. 100 (C. 13:1-28 et seq.);
- b. Home repair contractors, licensed pursuant to P.L.1960, c. 41 (C. 17:16C-62 et seq.);
- c. Electrical contractors, licensed pursuant to P.L.1962, c. 162 (C. 45:5A-1 et seq.);
- d. Master plumbers, licensed pursuant to P.L.1968, c. 362 (C. 45:14C-1 et seq.);
- e. Well drillers, licensed pursuant to P.L.1947, c. 377 (C. 58:4A-5 et seq.); and
- f. Any class of contractors who hereafter are licensed by the State.

45:1-9. Indication of license or certificate number on contracts, bids and advertisements

Any contractor licensed by the State shall indicate his license or certificate number on all contracts, subcontracts, bids and all forms of advertising as a contractor.

45:1-10. Disclosure of laboratory payments on bills to patients and third party payors

It shall be unlawful for any person licensed in the State of New Jersey to practice medicine or surgery, dentistry, osteopathy, podiatry or chiropractic to agree with any clinical, bio-analytical or hospital laboratory, wheresoever located, to make payments to such laboratory for individual tests, combination of tests, or test series for patients unless such person discloses on the bills to patients and third party payors the name and address of such laboratory and the net amount or amounts paid or to be paid to such laboratory for individual tests, combination of tests or test series.

45:1-10.1. Claims for third party payment; licensed health care professional; responsibility for filing

Effective 12 months after the adoption of regulations establishing standard health care enrollment and claim forms by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c. 154 (C.17B:30-23), a health care professional licensed pursuant to Title 45 of the Revised Statutes is responsible for filing all claims for third party payment, including claims filed on behalf of the licensed professional's patient for any health care service provided by the licensed professional that is eligible for third party payment, except that at the patient's option, the patient may file the claim for third party payment.

a. In the case of a claim filed on behalf of the professional's patient, the professional shall file the claim within 60 days of the last date of service for a course of treatment, on the standard claim form adopted by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c. 154 (C.17B:30-23).

b. In the case of a claim in which the patient has assigned his benefits to the professional, the professional shall file the claim within 180 days of the last date of service for a course of treatment, on the standard claim form adopted by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c. 154 (C.17B:30-23). If the professional does not file the claim within 180 days of the last date of service for a course of treatment, the third party payer shall reserve the right to deny payment of the claim, in accordance with regulations established by the Commissioner of Banking and Insurance, and the professional shall be prohibited from seeking any payment directly from the patient.

(1) In establishing the standards for denial of payment, the Commissioner of Banking and Insurance shall consider the good faith use of information provided by the patient to the professional with respect to the identity of the patient's third party payer, delays in filing a claim related to coordination of benefits between third party payers and any other factors the commissioner deems appropriate, and, accordingly, shall define specific instances where the sanctions permitted pursuant to this subsection shall not apply.

(2) A professional who fails to file a claim within 180 days and whose claim for payment has been denied by the third party payer in accordance with this subsection may, in the discretion of a judge of the Superior Court, be permitted to refile the claim if the third party payer has not been substantially prejudiced thereby. Application to the court for permission to refile a claim shall be made within 14 days of notification of denial of payment and shall be made upon motion based upon affidavits showing sufficient reasons for the failure to file the claim with the third party payer within 180 days.

c. The provisions of this section shall not apply to any claims filed pursuant to P.L.1972, c. 70 (C.39:6A-1 et seq.).

d. A health care professional who violates the provisions of subsection a. of this section may be subject to a civil penalty of \$250 for each violation plus \$50 for each day after the 60th day that the provider fails to submit a claim. The penalty shall be sued for and collected by the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.

45:1-11. Violations; penalty

Any person violating this act shall be guilty of a misdemeanor.

45:1-12. Podiatrist, optometrist or psychologist or professional service corporation; charge for completion of claim form for health insurance; fine; collection and enforcement

No podiatrist, optometrist or psychologist and no professional service corporation engaging in the practice of podiatry, optometry or psychology in this State shall charge a patient an extra fee for services rendered in completing a medical claim form in connection with a health insurance policy. Any person violating this act shall be subject to a fine of \$100.00 for each offense.

Such penalty shall be collected and enforced by summary proceedings pursuant to the Penalty Enforcement Law (N.J.S. 2A:58-1 et seq.). The Superior Court and municipal court shall have jurisdiction within its territory of such proceedings. Process shall be either in the nature of a summons or warrant and shall issue in the name of the State, upon the complaint of the State Board of Medical Examiners with respect to podiatrists, the New Jersey State Board of Optometry for optometrists or the State Board of Psychological Examiners for psychologists.

45:1-13. Repealed by L.1999, c. 403, § 12, eff. Jan. 18, 2000

45:1-14. Legislative findings and declarations; liberal construction of act

The Legislature finds and declares that effective implementation of consumer protection laws and the administration of laws pertaining to the professional and occupational boards located within the Division of Consumer Affairs require uniform investigative and enforcement powers and procedures and uniform standards for license revocation, suspension and other disciplinary proceedings by such boards. This act is deemed remedial, and the provisions hereof should be afforded a liberal construction.

45:1-15. Boards and professions or occupations regulated by or through such boards; application of act

The provisions of this act shall apply to the following boards and all professions or occupations regulated by, through or with the advice of those boards: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, the State Board of Social Work Examiners, the State Board of Physical Therapy, the Professional Counselor Examiners Committee, the New Jersey Cemetery Board, the Orthotics and Prosthetics Board of Examiners, the Occupational Therapy Advisory Council, the Electrologists Advisory Committee, the Alcohol and Drug Counselor Committee, the Fire Alarm, Burglar Alarm, and Locksmith Advisory Committee, the Home Inspection Advisory Committee, the Massage, Bodywork and Somatic Therapy Examining Committee, and the Audiology and Speech-Language Pathology Advisory Committee.

45:1-15.1. Rules and regulations

Consistent with their enabling acts, P.L.1978, c. 73 (C.45:1-14 et seq.) and the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.), the boards and others set forth in section 2 of P.L.1978, c. 73 (C.45:1-15) are authorized to adopt rules and regulations to serve the public health, safety and welfare.

45:1-16. Definitions

As used within this act the following words or terms shall have the indicated definition unless the context clearly indicates otherwise.

“Board” means any professional or occupational licensing board designated in section 2 of this act.

“Director” means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

“Person” means any natural person or his legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestuis que trust thereof.

45:1-17. Powers of Attorney General to implement act and administer law enforcement activities of boards

In implementing the provisions of this act and administering the law enforcement activities of those professional and occupational boards located within the Division of Consumer Affairs, the Attorney General may:

a. After advice to the board or boards in question of his intent to proceed under this section, and the specific action he intends to take, and the failure of such board or boards to take steps in accordance with the advice of the Attorney General within 30 days of receipt of such advice, promulgate rules and regulations consistent with the provisions of this act and the Administrative Procedure Act, P.L.1968, c. 410 (C. 52:14B-1 et seq.) governing the procedure for administrative hearings before all boards within the Division of Consumer Affairs. Such rules and regulations shall govern administrative complaints, answers thereto, issuance of subpoenas, appointment of hearing examiners, adjournments, submission of proposed findings of fact and conclusions of law, the filing of briefs, and such other procedural aspects of administrative hearings before the boards as the Attorney General may deem necessary; provided, however, nothing herein authorized shall be construed to require the Attorney General to promulgate rules regarding prehearing investigative procedures.

b. After advice to the board or boards in question of his intent to proceed under this section, and the specific action he intends to take, and the failure of such board or boards to take steps in accordance with the advice of the Attorney General within 30 days of receipt of such advice, promulgate substantive rules and regulations consistent with the provisions of any statute governing the activities of any licensing agency, board or committee located within the Division of Consumer Affairs, which shall be limited to disciplinary matters and arbitrary restrictions on initial licensure. In addition to promulgating such rules and regulations, the Attorney General may direct that any proposed or existing regulation be amended, abandoned or repealed. Prior to the final adoption of any regulation affecting the activities of any professional or occupational licensing agency, board or committee located within the division and prior to the issuance of any directive to amend, abandon or repeal any regulation, the Attorney General or his designee shall first consult with the agency, board or committee whose activities are affected regarding the proposed action.

c. After a full consideration of all relevant facts and the applicable law, may direct the initiation of any appropriate enforcement action by a professional or occupational licensing board or set aside, modify or amend, as may be necessary, any action or decision of a licensing agency, board or committee located within the Division of Consumer Affairs; provided, however, no such action shall be directed by the Attorney General in reviewing the action or decision of an agency, board or committee unless such action or decision is contrary to applicable law.

45:1-18. Investigative powers of boards, director or attorney general

Whenever it shall appear to any board, the director or the Attorney General that a person has engaged in, or is engaging in any act or practice declared unlawful by a statute or regulation administered by such board, or when the board, the director or the Attorney General shall deem it to be in the public interest to inquire whether any such violation may exist, the board or the director through the Attorney General, or the Attorney General acting independently, may exercise any of the following investigative powers:

a. Require any person to file on such form as may be prescribed, a statement or report in writing under oath, or otherwise, as to the facts and circumstances concerning the rendition of any service or conduct of any sale incidental to the discharge of any act or practice subject to an act or regulation administered by the board;

b. Examine under oath any person in connection with any act or practice subject to an act or regulation administered by the board;

c. Inspect any premises from which a licensed profession or occupation is conducted;

d. Examine any goods, ware or item used in the rendition of any professional or occupational service;

e. Examine any record, book, document, account or paper maintained by or for any professional or occupational licensee in the regular course of practicing such profession or engaging in such occupation;

f. For the purpose of preserving evidence of an unlawful act or practice, pursuant to an order of the Superior Court, impound any record, book, document, account, paper, goods, ware, or item used or maintained by or for any

board licensee in the regular course of practicing such profession or engaging in such occupation. In such cases as may be necessary, the Superior Court may, on application of the Attorney General, issue an order sealing items or material subject to this subsection.

In order to accomplish the objectives of this act or any act or regulation administered by a board, the Attorney General may hold such investigative hearings as may be necessary and may issue subpoenas to compel the attendance of any person or the production of books, records or papers at any such hearing or inquiry.

45:1-19. Failure or refusal to file statement or report, refusal of access to premises or failure to obey subpoena; penalty

If any person shall fail or refuse to file any statement or report or refuse access to premises from which a licensed profession or occupation is conducted in any lawfully conducted investigative matter or fail to obey a subpoena issued pursuant to this act, the Attorney General may apply to the Superior Court and obtain an order:

- a. Adjudging such person in contempt of court; or
- b. Granting such other relief as may be required; or
- c. Suspending the license of any such person unless and until compliance with the subpoena or investigative demand is effected.

45:1-20. Compelling testimony or production of book, paper or document; immunity from prosecution

If any person shall refuse to testify or produce any book, paper, or other document in any proceeding under this act for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, convict him of a crime, or subject him to a penalty or forfeiture, and shall, notwithstanding, be directed to testify or to produce such book, paper, or document by the Attorney General, he shall comply with such direction.

A person who is entitled by law to, and does assert such privilege, and who complies with such direction of the Attorney General shall not thereafter be prosecuted or subjected to any penalty or forfeiture in any criminal proceeding which arises out of and relates to the subject matter of the proceeding. No person so testifying shall be exempt from prosecution or punishment for perjury or false swearing committed by him in giving such testimony or from any civil or administrative action arising from such testimony.

45:1-21. Grounds for refusal to admit to examination or denial, suspension or revocation of any certificate, registration or license; definitions

A board may refuse to admit a person to an examination or may refuse to issue or may suspend or revoke any certificate, registration or license issued by the board upon proof that the applicant or holder of such certificate, registration or license:

- a. Has obtained a certificate, registration, license or authorization to sit for an examination, as the case may be, through fraud, deception, or misrepresentation;
- b. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
- c. Has engaged in gross negligence, gross malpractice or gross incompetence which damaged or endangered the life, health, welfare, safety or property of any person;
- d. Has engaged in repeated acts of negligence, malpractice or incompetence;
- e. Has engaged in professional or occupational misconduct as may be determined by the board;
- f. Has been convicted of, or engaged in acts constituting, any crime or offense involving moral turpitude or relating adversely to the activity regulated by the board. For the purpose of this subsection a judgment of conviction or a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;

g. Has had his authority to engage in the activity regulated by the board revoked or suspended by any other state, agency or authority for reasons consistent with this section;

h. Has violated or failed to comply with the provisions of any act or regulation administered by the board;

i. Is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare;

j. Has repeatedly failed to submit completed applications, or parts of, or documentation submitted in conjunction with, such applications, required to be filed with the Department of Environmental Protection;

k. Has violated any provision of P.L.1983, c. 320 (C.17:33A-1 et seq.) or any insurance fraud prevention law or act of another jurisdiction or has been adjudicated, in civil or administrative proceedings, of a violation of P.L.1983, c. 320 (C.17:33A-1 et seq.) or has been subject to a final order, entered in civil or administrative proceedings, that imposed civil penalties under that act against the applicant or holder;

l. Is presently engaged in drug or alcohol use that is likely to impair the ability to practice the profession or occupation with reasonable skill and safety. For purposes of this subsection, the term "presently" means at this time or any time within the previous 365 days;

m. Has prescribed or dispensed controlled dangerous substances indiscriminately or without good cause, or where the applicant or holder knew or should have known that the substances were to be used for unauthorized consumption or distribution;

n. Has permitted an unlicensed person or entity to perform an act for which a license or certificate of registration or certification is required by the board, or aided and abetted an unlicensed person or entity in performing such an act;

o. Advertised fraudulently in any manner.

For purposes of this act:

"Completed application" means the submission of all of the information designated on the checklist, adopted pursuant to section 1 of P.L.1991, c. 421 (C.13:1D-101), for the class or category of permit for which application is made.

"Permit" has the same meaning as defined in section 1 of P.L.1991, c. 421 (C.13:1D-101).

45:1-21.1. Annual summary of compliance information and attendance at continuing education seminars; costs; information deemed public records

a. A board obtaining information from the Department of Environmental Protection pursuant to section 1 of P.L.1991, c. 418 (C. 13:1D-110) on the compliance of a member of a regulated profession with the requirements for completed applications of the department, shall annually develop a detailed written summary of the information gathered by the department pursuant to P.L.1991, c. 418 (C. 13:1D-110) regarding compliance with the department's requirements for completed applications and attendance records for continuing education seminars required to be filed with the department pursuant to section 2 of P.L.1991, c. 419 (C. 13:1D-117).

b. Any reasonable costs incurred in preparation of the report required pursuant to this section may be included in the charges authorized pursuant to P.L.1974, c. 46 (C. 45:1-3.2).

c. Information required to be compiled by a board pursuant to this section, shall be deemed to be public records subject to the requirements of P.L.1963, c. 73 (C. 47:1A-1 et seq.).

45:1-21.2. Suspension of certain licenses; hearing

The director or a board shall suspend, as appropriate, after a hearing, the license, registration or certification of any person who has been certified by a lender or guarantor and reported to the director or the board, as the case may be, for nonpayment or default of a State or federal direct or guaranteed educational loan. The license, registration or certification shall not be reissued until the person provides the director or board with a written release issued by the lender or guarantor stating that the person has cured the default or is making payments on the loan in accordance with a repayment agreement approved by the lender or guarantor. If the person has continued to meet all other

requirements for licensure, registration or certification during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director or the board may impose.

45:1-22. Additional or alternative penalties to revocation, suspension or refusal to renew; temporary order suspending or limiting license; subpoena

In addition or as an alternative, as the case may be, to revoking, suspending or refusing to renew any license, registration or certificate issued by it, a board may, after affording an opportunity to be heard:

a. Issue a letter of warning, reprimand, or censure with regard to any act, conduct or practice which in the judgment of the board upon consideration of all relevant facts and circumstances does not warrant the initiation of formal action;

b. Assess civil penalties in accordance with this act;

c. Order that any person violating any provision of an act or regulation administered by such board to cease and desist from future violations thereof or to take such affirmative corrective action as may be necessary with regard to any act or practice found unlawful by the board;

d. Order any person found to have violated any provision of an act or regulation administered by such board to restore to any person aggrieved by an unlawful act or practice, any moneys or property, real or personal, acquired by means of such act or practice; provided, however, no board shall order restoration in a dollar amount greater than those moneys received by a licensee or his agent or any other person violating the act or regulation administered by the board;

e. Order any person, as a condition for continued, reinstated or renewed licensure, to secure medical or such other professional treatment as may be necessary to properly discharge licensee functions.

A board may, upon a duly verified application of the Attorney General that either provides proof of a conviction of a court of competent jurisdiction for a crime or offense involving moral turpitude or relating adversely to the regulated profession or occupation, or alleges an act or practice violating any provision of an act or regulation administered by such board, enter a temporary order suspending or limiting any license issued by the board pending plenary hearing on an administrative complaint; provided, however, no such temporary order shall be entered unless the application made to the board palpably demonstrates a clear and imminent danger to the public health, safety and welfare and notice of such application is given to the licensee affected by such order.

In any administrative proceeding commenced on a complaint alleging a violation of an act or regulation administered by a board, such board may issue subpoenas to compel the attendance of witnesses or the production of books, records, or documents at the hearing on the complaint.

45:1-23. Summary proceeding in Superior Court; injunction; orders necessary to prevent unlawful practice or remedy past unlawful activity

Whenever it shall appear to a board, the director or the Attorney General that a violation of any act, including the unlicensed practice of the regulated profession or occupation, or regulation administered by such board has occurred, is occurring, or will occur, the Attorney General, in addition to any other proceeding authorized by law, may seek and obtain in a summary proceeding in the Superior Court an injunction prohibiting such act or practice. In any such proceeding the court may assess a civil penalty in accordance with the provisions of this act, order restoration to any person in interest of any moneys or property, real or personal, acquired by means of an unlawful act or practice and may enter such orders as may be necessary to prevent the performance of an unlawful practice in the future and to fully remedy any past unlawful activity. In any action brought pursuant to this section, the court shall not suspend or revoke any license issued by a board.

45:1-24. Failure to comply with order of board directing payment of penalties or restoration of moneys or property; enforcement

Upon the failure of any person to comply within 10 days after service of any order of a board directing payment of penalties or restoration of moneys or property, the Attorney General or the secretary of such board may issue a certificate to the Clerk of the Superior Court that such person is indebted to the State for the payment of such penalty and the moneys or property ordered restored. A copy of such certificate shall be served upon the person

against whom the order was entered. Thereupon the clerk shall immediately enter upon his record of docketed judgments the name of the person so indebted and of the State, a designation of the statute under which the penalty is imposed, the amount of the penalty imposed, and amount of moneys ordered restored, a listing of property ordered restored, and the date of the certification. Such entry shall have the same force and effect as the entry of a docketed judgment in the Superior Court, and the Attorney General shall have all rights and remedies of a judgment creditor in addition to exercising any other available remedies. Such entry, however, shall be without prejudice to the right of appeal to the Appellate Division of the Superior Court from the board's order.

An action to enforce the provisions of any order entered by a board or to collect any penalty levied thereby may be brought in any municipal court or the Superior Court in summary manner pursuant to the Penalty Enforcement Act, (N.J.S. 2A:58-1 et seq.) and the rules of court governing the collection of civil penalties. Process in such action shall be by summons or warrant, and in the event that the defendant fails to answer such action, the court shall issue a warrant for the defendant's arrest for the purpose of bringing such person before the court to satisfy any order entered.

45:1-25. Violations; civil penalty; action to collect or enforce

Any person who engages in any conduct in violation of any provision of an act or regulation administered by a board shall, in addition to any other sanctions provided herein, be liable to a civil penalty of not more than \$10,000 for the first violation and not more than \$20,000 for the second and each subsequent violation. For the purpose of construing this section, each act in violation of any provision of an act or regulation administered by a board shall constitute a separate violation and shall be deemed a second or subsequent violation under the following circumstances:

- (1) an administrative or court order has been entered in a prior, separate and independent proceeding;
- (2) the person is found within a single proceeding to have committed more than one violation of any provision of an act or regulation administered by a board; or
- (3) the person is found within a single proceeding to have committed separate violations of any provision of more than one act or regulation administered by a board.

b. In lieu of an administrative proceeding or an action in the Superior Court, the Attorney General may bring an action in the name of any board for the collection or enforcement of civil penalties for the violation of any provision of an act or regulation administered by such board. Such action may be brought in summary manner pursuant to "The Penalty Enforcement Law of 1999" (N.J.S.2A:58-1 et seq.) and the rules of court governing actions for the collection of civil penalties in the municipal court where the offense occurred. Process in such action may be by summons or warrant and in the event that the defendant in such action fails to answer such action, the court shall, upon finding an unlawful act or practice to have been committed by the defendant, issue a warrant for the defendant's arrest in order to bring such person before the court to satisfy the civil penalties imposed. In any action commenced pursuant to this section, the court may order restored to any person in interest any moneys or property acquired by means of an unlawful act or practice.

c. Any action alleging the unlicensed practice of a profession or occupation shall be brought pursuant to this section or, where injunctive relief is sought, by an action commenced in the Superior Court. In any action brought pursuant to this act, a board or the court may order the payment of costs for the use of the State, including, but not limited to, costs of investigation, expert witness fees and costs, attorney fees and costs, and transcript costs.

45:1-26. Repeal of inconsistent acts and parts of acts

All acts and parts of acts inconsistent with this act are hereby superseded and repealed.

45:1-27. Severability

If any provision of this law or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the law which can be given effect without the invalid provision or application, and to this end the provisions of this law are severable.

CHAPTER 17B
DEPARTMENT OF LAW AND PUBLIC SAFETY

OPHTHALMIC DISPENSING

52:17B-41.1. Purpose of act; “ophthalmic appliances and lenses” defined; exemptions; prohibited acts

This act is enacted in the exercise of the police powers of the State and its purposes generally are to protect the public health, welfare and safety by providing for the regulation of the sale, dispensing and supplying of all ophthalmic appliances, eyeglasses, or ophthalmic lenses to the ultimate wearer or consumer in this State.

For the purposes of this act, ophthalmic appliances and lenses are defined as those employed for the aid or protection of human vision or for the correction of defects of human vision.

Physicians and optometrists, duly licensed to practice medicine and optometry in this State, are specifically exempt from the provisions of this act.

A person registered under the provisions of this act is specifically prohibited from engaging in the practice of ocular refraction, orthoptics, visual training, or fitting contact lenses; or the prescribing of subnormal vision aids or telescopic spectacles, in his own behalf or as an employee or student of another, whether under the personal supervision of his employer or preceptor or not.

No person not licensed to practice medicine or optometry in this State shall directly or indirectly, for himself or others, do or engage in any act or practices specifically prohibited to duly registered ophthalmic dispensers and ophthalmic technicians by the provisions of this act.

52:17B-41.2. State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians; compensation; expenses; report

There is hereby created the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians in the Division of Professional Boards of the Department of Law and Public Safety, hereinafter designated as the “board,” which shall be composed of five members who shall be appointed by the Governor, four of whom shall be ophthalmic dispensers and the other member shall be an optometrist duly licensed by the State Board of Optometrists. The four ophthalmic dispensers shall be engaged in the practice of ophthalmic dispensing in the State of New Jersey for not less than five years, each of whom shall be residents of the State of New Jersey, and also shall be persons of recognized ability and honor, and who may be appointed by the Governor from a list to be furnished within thirty days after any vacancy occurs in the membership of said board by the Society of Dispensing Opticians of New Jersey, Incorporated, of whom the persons nominated are members; and for every membership filled in said board, at least three names shall be submitted to the Governor, and from the names thus submitted, the Governor may select one person to be a member of said board; and the optometrist may be appointed by the Governor from a list to be furnished within thirty days after any vacancy occurs in the membership of said board by the New Jersey Optometric Association, of whom the person nominated is a member; and for every membership filled in said board, at least three names shall be submitted to the Governor, and from the names thus submitted, the Governor may select one person to be a member of said board.

One ophthalmic dispenser member shall be appointed for a term of one year; another ophthalmic dispenser member shall be appointed for a term of two years; another ophthalmic dispenser member shall be appointed for a term of three years; another ophthalmic dispenser member shall be appointed for a term of four years; and the optometrist member shall be appointed for a term of five years; and upon the expiration of the term of said optometrist member, his successor shall be an ophthalmic dispenser member of said board, so that at the expiration of the optometrist member’s term on the board, the board shall thereafter be composed of five ophthalmic dispenser members.

Upon the expiration of the terms of members herein named, the Governor shall annually fill each vacancy resulting from the expiration of a term of office of a member for a term of five years by an appointment of an ophthalmic dispenser in the same manner as an original appointment is to be made.

Each appointee, within thirty days after receipt of his commission, shall take, subscribe and file in the office of the Secretary of State the oath or affirmation prescribed by law.

A vacancy resulting from any cause other than the expiration of a term shall be filled for the unexpired term by an appointment of an ophthalmic dispenser by the Governor in the same manner as an original appointment is to be made.

Each member of the board shall receive the sum of two hundred fifty dollars (\$250.00) for each regular examination conducted by the board, and each member of the board shall also be compensated for actual expenses incurred in the discharge of his official duties, all to the extent that funds are available from the license fees prescribed herein.

The Governor may remove any member for cause, upon notice and opportunity to be heard.

On June thirtieth of each year, the board shall submit to the Attorney General a written report. Such report shall include the names of all ophthalmic dispensers and ophthalmic technicians to whom licenses have been granted as provided in section six of this act, any cases heard and decisions rendered by the board, and the recommendation of the board as to future policies. Each member of the board shall review and sign such report before its submission to the Attorney General. The principal office of the board shall be in Trenton, New Jersey, but it may meet or conduct any of its business at any place in this State. The board shall empower any member to conduct any proceeding, hearing or investigation necessary to its purposes. Three members of the board shall be a quorum.

52:17B-41.3. Meeting of board; officers; subpoenas, issuance; inspector

The board shall hold at least two meetings each year and may hold such other meetings as it may deem advisable. The time and place of all such meetings shall be determined by the board.

The board shall elect a president, a secretary and a treasurer from its membership and shall have a common seal, of which all courts of this State shall take judicial notice. Its president, or secretary, may issue subpoenas to compel attendance of witnesses to testify before the board and administer oaths in taking testimony in any matter pertaining to its duties, which subpoenas shall issue under the seal of the board and shall be served in the same manner as subpoenas issued out of the Superior Court of this State, and every person who refuses or neglects to obey the command of such subpoena, or who, after appearing, refuses to be sworn and testify, shall, in either event, be liable to a penalty of fifty dollars (\$50.00) to be sued for in the name of the board in any court of competent jurisdiction, which penalty when collected shall be paid to the treasurer of said board.

The board may appoint an agent, subject to the approval of the Attorney General, whose title shall be "inspector of the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians," who shall hold office during the pleasure of the board and who may be removed by the board subject to the approval of the Attorney General, and shall, during his continuance in office, be authorized to serve and execute any process issued by any court of record under the provisions of this act. Such agent shall not be subject to the provisions of the Civil Service law.

52:17B-41.4. Compensation of secretary and inspector

The secretary and the inspector of the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians shall receive such compensation as shall be fixed by the board, subject to the approval of the Attorney General, within the limits of available appropriations therefor.

52:17B-41.5. Practice of ophthalmic dispensing; prescription required; "ophthalmic technicians" defined; temporary permits to persons from out of State; apprentices

A person practices ophthalmic dispensing within the meaning of the provisions of this act relating to ophthalmic dispensing who prepares and dispenses lenses, spectacles, eyeglasses or appurtenances thereto to the intended wearers thereof on written prescriptions from physicians or optometrists duly licensed to practice their profession, and in accordance with such prescriptions, interprets, measures, adapts, fits and adjusts such lenses, spectacles, eyeglasses or appurtenances thereto to the human face for the aid or correction of visual or ocular anomalies of the human eyes. The services and appliances relating to ophthalmic dispensing shall be dispensed, furnished or supplied to the intended wearer or user thereof only upon prescription issued by a physician or optometrist; but duplications, replacements, reproductions or repetitions may be done without prescription, and such act shall likewise be construed to constitute the practice of ophthalmic dispensing the same as if performed on the basis of an original written prescription. No person shall sell, dispense, supply or offer ophthalmic lenses, spectacles or

eyeglasses to intended wearers or users thereof without prescriptions, properly authorized, by physicians or optometrists duly licensed to practice their professions in the State of New Jersey; provided, however, nothing in this act shall be construed to apply to the sale of toy glasses or goggles consisting of plano-white, plano-colored lenses, magnifiers, loupes, binoculars or ordinary colored glasses or the sale of ready-made glasses or spectacles, with simple magnification only, when sold as merchandise at established places of business.

An ophthalmic technician, for the purposes of this act, shall be defined as follows:

One having a knowledge of optics and skilled in the technique of producing and reproducing ophthalmic lenses and kindred products, and mounting same to supporting materials.

Any person from out of the State of New Jersey with appropriate ophthalmic dispensing qualifications or ophthalmic technician qualifications who can prove such qualifications may apply to the board for a temporary permit to secure employment in the State of New Jersey as an ophthalmic dispenser or ophthalmic technician, and said permit shall automatically expire after the publication of the grades of the next succeeding examination; and the board shall be limited to the issuance of only two temporary permits to each applicant, and a fee of five dollars (\$5.00) shall accompany such application.

Any person entering into employment in an ophthalmic dispensing establishment for the purpose of obtaining practical experience and skill as a licensed ophthalmic dispenser or ophthalmic technician shall register as an apprentice with the board and the computation of any period of apprenticeship under the provisions of this act shall commence at the date of such registration. Such application for registration shall be certified under oath, by the employer and by such applicant; and a fee of five dollars (\$5.00) shall accompany such application, and the board may issue to such applicant an apprentice's certificate. Any person who may have served part of his apprenticeship in any other State or country, not requiring such registration, shall be obliged to give proof of such service satisfactory to the board.

Nothing in the provisions of this act relating to ophthalmic dispensing shall be construed to limit or restrict, in any respect, the practice of medicine by physicians duly licensed to practice in this State, or the practice of optometry by optometrists duly licensed to practice optometry in this State.

52:17B-41.6. Examinations; certificate of registration; annual renewal

The board shall examine for competence in matters pertaining to ophthalmic dispensing and allied and practical subjects.

To every applicant who shall pass such examination, the board shall issue a certificate of registration which shall constitute a license hereunder, and shall be issued for a period of one year and may be renewed annually as herein provided. Any license issued hereunder shall be subject to all of the provisions of this act and the rules and regulations promulgated hereunder.

52:17B-41.6a. Continuing education to qualify for license renewal

The board may require all ophthalmic dispensers now or hereafter licensed in this State to take board-approved courses of study relating to the practice of the profession of opticianry or to maintain proficiency in some other alternative manner to be prescribed and established by the board in order to qualify for license renewal.

52:17B-41.7. Certificate holder may practice as ophthalmic dispenser or technician

Any person who has received a certificate of registration as a qualified ophthalmic dispenser or qualified ophthalmic technician as provided for herein shall be permitted and authorized to practice as an ophthalmic dispenser or ophthalmic technician, as defined in section five of this act.

52:17B-41.8. Display of certificate

Every holder of a certificate of registration shall conspicuously display the same in his establishment.

52:17B-41.9. Meetings of board; examinations; qualifications as candidates

The board shall meet at least twice annually, at which time candidates applying for certification shall be examined and their qualifications determined; and the board may meet at such other times and places as the board may

prescribe. A candidate shall qualify for examination and licensure as an ophthalmic dispenser upon providing the board with proof that he:

- a. Holds a high school diploma or equivalent; and
- b. Has fulfilled either of the following requirements;

(1) Holds an associate degree in ophthalmic science or its equivalent from an accredited institution and has worked full-time as an apprentice ophthalmic dispenser under the supervision of a licensed ophthalmic dispenser for not less than 4 months nor more than 1 year prior to taking the examination; or

(2) Has served not less than 36 calendar months as an apprentice dispenser during which time he has satisfactorily completed not less than the requisite number of school hours of board-approved courses in ophthalmic science, said number of hours to be determined by the board.

52:17B-41.9a. Apprentice dispenser; registration; requirements for qualification

No one may apprentice pursuant to section 5 of P.L.1952, c. 336 (C. 52:17B-41.5) unless he is registered with the board. Subsequent to registration, an apprentice dispenser who does not hold an associate degree in ophthalmic science or its equivalent from an accredited institution shall serve a minimum of 36 months of apprenticeship during which time he shall accumulate not less than the requisite number of school hours in board-approved courses in ophthalmic science, which service and education shall be completed in the following manner:

a. During the first 12 months of the apprenticeship, an apprentice dispenser shall serve not less than one-half of his time in technical optical procedures and satisfactorily complete not less than the requisite number of school hours of board-approved courses.

b. Upon completion of the first 12 months as an apprentice dispenser and the requisite educational requirements, an apprentice shall be required to take and pass a qualifying technical examination established and administered by the board. In the event the apprentice dispenser fails such examination, he shall not thereafter directly serve the public in the dispensing of ophthalmic products until he passes the qualifying technical examination. Such apprentice dispenser who fails examination may take two subsequent examinations for a total limit of three. An apprentice dispenser shall be required to take the first available qualifying technical examination for which he is eligible.

c. Upon successful completion of the qualifying technical examination, an apprentice shall satisfactorily complete the remainder of the school hours of board-approved courses while continuing to work full-time as an apprentice under the supervision of a licensed dispenser for such additional period as necessary for the apprentice dispenser to have accumulated the remainder of the required 36 months of work. Upon accumulation of not less than the requisite number of school hours and the required supervised employment, the apprentice shall be eligible to take the examination for licensure. Employment as an apprentice dispenser shall require supervision by a licensed ophthalmic dispenser who may supervise the number of apprentices that the board permits by regulation.

52:17B-41.9b. Ophthalmic technician; qualifications

A candidate shall qualify for examination and licensure as an ophthalmic technician upon providing the board with proof that he has served not less than 12 calendar months as an apprentice technician.

No one may apprentice pursuant to section 5 of P.L.1952, c. 336 (C. 52:17B-41.5) unless he is registered with the board. Employment as an apprentice technician shall require supervision by a licensed ophthalmic dispenser or licensed ophthalmic technician who may supervise the number of apprentices that the board permits by regulation. Any person who holds or obtains an ophthalmic technician license shall be eligible to register with the board as an apprentice dispenser, notwithstanding the failure of such applicant to possess a high school diploma or its equivalent. Subsequent to such registration, such person shall be deemed eligible to take the examination for licensure as an ophthalmic dispenser upon completion of 36 calendar months as an apprentice dispenser during which time he has satisfactorily completed not less than the requisite number of school hours of board-approved courses in ophthalmic science.

52:17B-41.9c. Examinations; retention; inspection

The board shall maintain all examinations of candidates for licensure as ophthalmic dispensers and of candidates for licensure as ophthalmic technicians on file for at least one year. Upon written request to the board by a candidate, the board shall make his examination available for inspection by the candidate.

52:17B-41.10. Repealed by L.1979, c. 432, § 2, eff. Feb. 14, 1980

52:17B-41.11. Persons who have practiced two years before enactment; license

All applicants who have been principally engaged in ophthalmic dispensing and in the preparation and processing of ophthalmic lenses and frames to prescriptions in the State of New Jersey for a period of two years prior to the effective day of this enactment, and whose applications, accompanied by a fee of twenty-five dollars (\$25.00), have been properly filed prior to such day or within six months after said day, shall be issued a license.

All applicants who have been principally engaged as an ophthalmic technician in the preparation and processing of ophthalmic lenses and frames in the State of New Jersey for a period of two years prior to the effective day of this enactment, and whose applications, accompanied by a fee of ten dollars (\$10.00), have been properly filed prior to such day or within six months after said day, shall be issued a license.

52:17B-41.12. License to be evidenced by certificate; fees; persons not holding license within 5 years of application must pass examination

A license issued under the provisions of this act shall be evidenced by a certificate issued by the board. A fee shall be paid to the board, at the date of application for license, as follows: For licensed ophthalmic dispensers, twenty-five dollars (\$25.00), and fifteen dollars (\$15.00) for annual renewal of any such license. For licensed ophthalmic technicians, fifteen dollars (\$15.00), and ten dollars (\$10.00) for annual renewal of any such license. Any person licensed by said board who shall fail to renew his license within six months after the date of its expiration and shall, thereafter, desire to renew such license, shall pay to the board fifteen dollars (\$15.00) for such renewal; provided, before granting a license to any applicant who has not held a license issued by said board within five years of the date of application, said board shall require such applicant to pass a standard examination satisfactory to said board and to pay to the board the fee required of original applicants.

52:17B-41.13. Forms for application and examination; rules and regulations

The board shall prescribe and prepare the necessary forms for application and examination of candidates for certification hereunder and shall by its formally adopted rules and regulations establish the method and manner in which such application shall be filed and the examination held.

The board shall be authorized and empowered to promulgate such reasonable rules and regulations which shall be necessary to give full force and effect to the provisions of this act and to regulate the practice of ophthalmic dispensers and ophthalmic technicians in this State within the meaning hereof; provided, however, such rules and regulations are not inconsistent with the provisions of this act.

52:17B-41.14. Disposition of fees, fines, penalties and other moneys

(a) All license, certificate, permit, registration and renewal fees prescribed by this act shall be paid into the State treasury through the Attorney General; and

(b) All fines, penalties and other moneys derived from the operation of, or payable pursuant to law to, the board shall be paid into the State treasury through the Attorney General.

Such fees, fines, penalties and other moneys so paid into the State treasury shall be placed to the credit of the board, and no part thereof may be disbursed or expended by the board for any purpose except in accordance with appropriations made by law, and then only upon warrant of the Director of the Division of Budget and Accounting in the Department of the Treasury on vouchers certified or approved by the president of the board.

52:17B-41.15. Budget request for appropriations

On or before the fifteenth day of September in each year, the board shall prepare and submit to the Attorney General a budget request for appropriations for the board for the ensuing fiscal year. The budget request so prepared shall, upon approval of the Attorney General, be submitted to the State Treasurer.

52:17B-41.16. Surplus; disposition

Any surplus remaining in any year to the credit of the board, after annual appropriations made as provided herein, shall be paid into and become part of the General Fund of the State.

52:17B-41.17. Advertisements by ophthalmic dispenser or ophthalmic technician; rebates or commissions

It shall be lawful for an ophthalmic dispenser or ophthalmic technician to advertise; provided, that no mention shall be made, either directly or indirectly by any means whatsoever, of a discount, any definite or indefinite price or credit terms on corrective ophthalmic lenses, frames, complete prescription or corrective glasses; and provided, that such ophthalmic dispenser or ophthalmic technician does not advertise in any manner that would tend to mislead or deceive the public or that would in any manner discredit others in the eye care field. An ophthalmic dispenser or ophthalmic technician shall have the right with each individual patient to recommend an ophthalmologist or optometrist.

It shall be unlawful to advertise or employ displays in such a manner as to suggest, infer or indicate that persons licensed under this act are qualified to give professional advice concerning eye care.

It shall be unlawful for any ophthalmic dispenser or ophthalmic technician to use the word "licensed" or any of its synonyms.

It shall be unlawful for any ophthalmic dispenser or ophthalmic technician or employee or agent thereof or any other person on their behalf to offer to pay a rebate or commission in any form whatsoever to any ophthalmologist, refractionist, or optometrist in return for referring patients to anyone licensed under this act.

52:17B-41.18. Practice without license; penalty

Any person who, after this act becomes operative, shall practice as a licensed ophthalmic dispenser or ophthalmic technician as defined in section five of this act, or hold himself out to be a qualified or licensed ophthalmic dispenser or ophthalmic technician, or designate himself by any other term or title which implies that he is an ophthalmic dispenser or ophthalmic technician without having been licensed as a qualified ophthalmic dispenser or ophthalmic technician, by the board, shall be liable to a penalty of two hundred dollars (\$200.00), which penalty shall be recovered in a summary manner in the Superior Court in the manner prescribed by the rules of procedure for those courts.

52:17B-41.19, 52:17B-41.20. Repealed by L.1979, c. 432, § 1, eff. Feb. 14, 1980

52:17B-41.21. Repealed by L.1953, c. 49, p. 861, § 23

52:17B-41.22. Repealed by L.1979, c. 432, § 1, eff. Feb. 14, 1980

52:17B-41.23. Partial invalidity

If any clause, sentence, paragraph or part of this act be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this act, and it is hereby declared to be the legislative intent that this act would have been adopted had such invalid provision not been included herein.

52:17B-41.24. Effective date

This act shall become operative ninety days after its enactment.

CONTACT LENS DISPENSING

52:17B-41.25. Short title

This act shall be known and may be cited as the "Contact Lens Dispenser Act."

52:17B-41.26. Definitions

As used in this act:

a. “Practice of contact lens dispensing” means the sale or delivery of contact lenses to the patient based upon the prescription of powers for vision and specifications for contact lenses for the patient as provided by a licensed physician or optometrist. The practice includes, but is not limited to, the analysis and interpretation of prescriptions and specifications for contact lenses; the preparation of orders and the grinding for fabrication of contact lenses; the instruction of the patient as to the proper insertion, removal, care and the use of the contact lenses; and the duplication, reproduction and replacement of previously prepared contact lenses.

b. “Prescription” means written instructions or orders from a licensed physician or optometrist stating the powers of vision of a person.

c. “Duplication” means the replacement or reproduction of contact lenses based upon a prescription or specifications of record.

52:17B-41.27. Authorized dispensers

Any ophthalmic dispenser licensed in New Jersey may engage in the practice of contact lens dispensing.

52:17B-41.28. Written prescription required

A contact lens dispenser shall only dispense contact lenses upon a written prescription provided by a licensed physician or optometrist containing the powers of vision and specifications for contact lenses for the patient.

52:17B-41.29. Replacement, reproduction or duplication of previously dispensed contact lenses

Previously dispensed contact lenses shall only be replaced, reproduced, or duplicated upon the prescription or specifications of record, a copy of which shall be provided by the original contact lens prescriber or dispenser upon the patient’s request; provided that the prescription or specifications of record are not more than two years old.

52:17B-41.30. Release of copy of patient’s prescription to dispenser upon request of patient; exception

A licensed physician or optometrist shall release a copy of the patient’s prescription containing a spectacle lens specification with contact lens specifications to any person qualified to dispense contact lenses upon the patient’s request, except that nothing in this act shall require an optometrist or physician to write a prescription for contact lenses when, in the judgment of the optometrist or physician, it is contraindicated.

52:17B-41.31. Release of complete record of contact lens specifications upon request

Notwithstanding any rule or regulation to the contrary, the complete record of contact lens specifications shall be released by an optometrist or ophthalmologist to the patient or to another ophthalmologist, optometrist or ophthalmic dispenser licensed in the State of New Jersey upon either the oral or written request of the patient or professional acting on the patient’s behalf.

NEW JERSEY REGULATIONS

CHAPTER 33

STATE BOARD OF OPHTHALMIC DISPENSERS AND OPHTHALMIC TECHNICIANS

SUBCHAPTER 1. GENERAL RULES AND REGULATIONS

13:33-1.1 Ophthalmic dispenser apprentice certificate

An ophthalmic dispenser apprentice certificate shall expire three years after date of issue.

13:33-1.2 Ophthalmic technician apprentice certificate

An ophthalmic technician apprentice certificate shall expire one year after date of issue.

13:33-1.3 Supervision of apprentice ophthalmic dispensers and technicians

(a) Apprentice ophthalmic dispensers shall dispense ophthalmic appliances, eyeglasses or ophthalmic lenses as set forth in N.J.S.A. 52:17B-41.5, only under the immediate supervision of a licensed ophthalmic dispenser. Apprentice ophthalmic dispensers and technicians may produce, prepare and process ophthalmic lenses only under the immediate supervision of a licensed ophthalmic dispenser or a licensed ophthalmic technician. For the purpose of this subsection "immediate supervision" shall mean that a supervising preceptor shall be on the premises at all times during which an individual is engaged in apprentice functions.

(b) During an apprenticeship a supervising preceptor shall be qualified to instruct and train an apprentice in the requisite skills, methods and techniques so as to assure that an apprentice is competent in producing and reproducing ophthalmic lenses and kindred products and mounting the same to supporting materials. In addition, a preceptor must be qualified to afford training and instruction in the following areas:

1. With regard to ophthalmic dispenser apprentices:

- i. Reading and interpreting prescriptions brought to a dispensing establishment and ascertaining the patient's individual needs;
- ii. Selection, physical fitting and adjustment of frame in accordance with the patient's prescription and facial contour;
- iii. Taking of near and far monocular pupillary distances;
- iv. Lenses: grinding, processing, optical and geometric centers, prisms, measurement, base curve, multi-focal, colors (tints), neutralization, transposition, duplication, and insertion;
- v. Use of all required equipment pursuant to N.J.A.C. 13:33-2.1 and 2.2, including, but not limited to, vertometer, lensometer or any other automatic electron equipment to measure the power of a lens, a lens clock and millimeter ruler, hand or automatic protractor for marking up lenses, automatic edger and handfinishing stone;
- vi. Frames: mountings, sizes, measurements and types of temples.

2. With regard to ophthalmic technician apprentices:

- i. Reading and transposition of prescriptions or orders for lenses;
- ii. Lenses: grinding, processing, optical and geometric centers, prisms, measurements, base curve, multi-focal, colors (tints), neutralization, transposition, duplication, and insertion;
- iii. Use of all required equipment pursuant to N.J.A.C. 13:33-2.1 and 2.2, including, but not limited to, vertometer, lensometer or any other automatic electronic equipment to measure the power of a lens, a lens clock and millimeter ruler, hand or automatic protractor for marking up lenses, automatic edger and handfinishing stone;
- iv. Frames: mountings, sizes, measurements and types of temples.

(c) In the event that a preceptor's apprentice fails to establish competence in licensing examinations for reasons attributable to the failure of a preceptor to properly train and instruct such apprentice, the Board, upon notice and affording an opportunity to be heard, may exclude an individual from acting as a preceptor.

(d) A licensed ophthalmic dispenser or licensed ophthalmic technician employed full time at an optical establishment, or a physician or optometrist duly licensed to practice medicine or optometry in the State of New Jersey who is qualified to train apprentices, shall not be permitted to employ, supervise or train more than two registered apprentices at any given time.

(e) A work-study program is defined as that activity which places students enrolled in the Ophthalmic Science curriculum of any school approved by the National Commission on Accreditation into the optical field on a limited basis under the supervision of a college-approved preceptor for the purpose of gaining college-supervised practical experience. A college-approved preceptor is that individual licensed in New Jersey as an ophthalmic dispenser or

ophthalmic technician who meets the conditions established by the college in the development of its work-study program.

1. Where a licensed ophthalmic dispenser or a licensed ophthalmic technician qualifies as a college-approved preceptor in a work-study program, he or she shall be permitted to supervise additionally a maximum of two work-study students who shall be registered with the State Board of Examiners. The work-study time accumulated by students will not be credited to apprenticeship time required by statute to qualify for licensure.

13:33-1.4 (Reserved)

13:33-1.5 (Reserved)

13:33-1.6 (Reserved)

13:33-1.7 Branch office certificate

(a) Licensees who practice in a location other than the office location registered with the Board shall obtain a branch office certificate for each such location. A branch office certificate will be issued for a period of two years.

(b) A fee will be charged for this certificate as indicated in N.J.A.C. 13:33-1.41.

(c) A licensee may work in locations that are not registered with the Board as the licensee's main office or branch offices for a maximum of 12 days in a calendar year as long as the licensee notifies the Board, in writing, where he or she will be working.

(d) If a licensee spends or intends to spend more than 12 days in a calendar year at unregistered locations, he or she shall notify the Board in writing. The licensee shall obtain a branch certificate from the Board for any location in which he or she practices and shall pay the branch office registration fee pursuant to N.J.A.C. 13:33-1.41.

13:33-1.8 Change of address

All persons holding certificates or permits must notify the Board in writing within 10 days of any change of address or place of employment.

13:33-1.9 (Reserved)

13:33-1.10 (Reserved)

13:33-1.11 Out-of-State ophthalmic dispenser application

(a) A Temporary Ophthalmic Dispenser Permit shall be issued to an individual from out of the State of New Jersey if the applicant is licensed as an ophthalmic dispenser in another state and has either an associate degree in ophthalmic science from a school accredited by the Commission on Opticianry Accreditation or 30 credits of course work including Materials I and II Lecture, Materials I and II Lab, Dispensing I and II Lecture, Dispensing I and II Lab, Principles of Optics (Theory of Optics), Anatomy and Physiology of the Eye and Contact Lens Theory and has worked in the optical field for a minimum of three years following the award of his or her license, the last year of ophthalmic dispensing having been acquired within five years of the date of application for the temporary permit. Applicants shall obtain a grade of either a "C," or better, or a numerical grade of 70, or better, in 30 credits of coursework.

(b) The holder of Temporary Ophthalmic Dispenser Permit may practice dispensing in New Jersey without supervision but may not supervise any apprentices and must take the first Ophthalmic Dispenser licensing examination following the issuance of the Permit.

(c) If the holder of a Temporary Ophthalmic Dispenser Permit fails the Ophthalmic Dispenser licensing examination once, the Temporary Ophthalmic Dispenser Permit may be renewed one time. An applicant working as a Temporary Ophthalmic Dispenser pursuant to a renewed permit shall take the next scheduled licensing examination. If the applicant fails the second examination, the applicant shall surrender the Temporary Ophthalmic Dispenser Permit and shall no longer work as an ophthalmic dispenser until he or she passes the licensing examination. If an applicant fails to take the next scheduled examination because of illness, emergency or other

good cause, the Board may allow the applicant to take another examination. An applicant who has surrendered the Temporary Ophthalmic Dispenser Permit may work in an ophthalmic dispensing establishment supervised by a preceptor pursuant to N.J.A.C. 13:33-1.3. An applicant who has surrendered the Temporary Ophthalmic Dispenser Permit may take the Ophthalmic Dispenser Licensing examination provided that the applicant practiced as an Ophthalmic Dispenser in another state within the previous five years. An applicant whose last year of Ophthalmic Dispenser practice was more than five years ago may enter an apprenticeship program for licensure.

(d) An individual who has worked as an ophthalmic dispenser in a state that does not license ophthalmic dispensers shall qualify to take the Ophthalmic Dispenser licensing examination in this State provided that he or she:

1. Holds an associate degree in Ophthalmic Science from a school accredited by the Commission on Opticianry Accreditation and has four months of experience as a dispenser of prescription eyewear subsequent to the award of the degree and within the immediately preceding five-year period; or

2. Has satisfactorily completed 30 credit hours of courses in ophthalmic science including Materials I and II Lecture, Materials I and II Lab, Dispensing I and II Lecture, Dispensing I and II Lab, Principles of Optics (Theory of Optics), Anatomy and Physiology of the Eye and Contact Lens Theory and thereafter has worked as a dispenser of prescription eyewear for three calendar years, the last year of which shall have been within five years of the date of application for examination. Applicants shall obtain a grade of either a "C," or better, or a numerical grade of 70, or better, in all required optical courses.

13:33-1.12 Out-of-State ophthalmic technician applicants

(a) A Temporary Ophthalmic Technician Permit shall be issued to an individual from out of the State of New Jersey who has completed an Ophthalmic Technician course from a school accredited by the Commission on Opticianry Accreditation and can show that he or she has completed at least one year of optical laboratory experience within five years of the date of application for such Permit.

(b) The holder of a Temporary Ophthalmic Technician Permit may work as an Ophthalmic Technician in New Jersey without supervision of a New Jersey licensee but may not supervise any apprentices and must take the first Ophthalmic Technician licensing examination following the issuance of the Permit.

(c) If the holder of a Temporary Ophthalmic Technician Permit fails the Ophthalmic Technician licensing examination, the Temporary Ophthalmic Technician Permit may be renewed one time. An applicant working as a Temporary Ophthalmic Technician pursuant to a renewed Temporary Ophthalmic Technician Permit shall take the next scheduled licensing examination. If the applicant fails the second examination, he or she shall surrender the Temporary Ophthalmic Technician Permit and shall no longer work as an Ophthalmic Technician until he or she passes the licensing examination. If an applicant fails to take the next scheduled examination because of illness, emergency or other good cause, the Board may allow the applicant to take another examination. An applicant who has surrendered his or her Temporary Ophthalmic Technician Permit may work in an Ophthalmic establishment supervised by a preceptor pursuant to N.J.A.C. 13:33-1.3. An applicant who has surrendered the Temporary Ophthalmic Technician Permit may take the Ophthalmic Technician Licensing examination provided that the applicant practiced as an Ophthalmic Technician in another state within the previous five years. An applicant whose last year of Ophthalmic Technician practice was more than five years ago may enter an apprenticeship program for licensure.

(d) An individual who has fabricated prescription eyewear for one year in another state or has attended a course in Ophthalmic Technicianry in a school approved by the Commission on Opticianry Accreditation may apply for examination and licensure as an Ophthalmic Technician, without having worked in the State of New Jersey, subject to the provision that the last year of experience of fabricating prescription eyewear has been acquired within five years of the date of application for examination.

13:33-1.13 Ophthalmic dispenser apprentice; licensing examination

(a) An ophthalmic dispenser apprentice shall complete not less than 12 credit hours of course work in Materials I and Materials II Lecture and Materials I and Materials II Lab. The 12 credits shall be completed within the first 12 months of the apprenticeship and shall be from a school accredited by the Commission on Opticianry Accreditation.

(b) The ophthalmic dispenser apprentice shall, at the completion of the first 12 months of the apprenticeship, apply for the first scheduled Qualifying Technical examination. The Qualifying Technical examination shall be

offered twice annually and shall consist of a written test and practical tests in neutralization and fabrication. In the event of illness, extreme emergency, or other good cause, an extension of application to the next succeeding examination may be granted by the Board.

(c) If the ophthalmic dispenser apprentice fails the qualifying technical examination, he or she shall no longer serve the public by dispensing, measuring or fitting prescriptive eyewear. An ophthalmic dispenser apprentice who has failed the qualifying technical examination shall not accumulate time towards the three-year apprenticeship requirement until the apprentice passes the qualifying technical examination. If the ophthalmic dispenser apprentice is unsuccessful in passing three consecutive examinations, the apprentice shall surrender the apprentice permit. In the event that the ophthalmic dispenser apprentice meets the requirements to sit for examination and neither applies for, appears at, or is excused from said examination, an automatic failure will be imposed.

(d) An individual who has failed the Qualifying Technical examination three times may take the Ophthalmic Technician Licensing examination. If the individual passes the Ophthalmic Technician Licensing examination, he or she shall be reinstated in the Ophthalmic Dispensing Apprenticeship. The individual may take the Ophthalmic Technician Licensing examination three times.

(e) During the 36 months of the apprenticeship, the ophthalmic dispenser apprentice shall complete at least 30 hours of course work in ophthalmic science from a school accredited by the Commission on Opticianry Accreditation. The 30 credits shall include Materials I and II Lecture and Materials I and II Lab, taken within the first 12 months of apprenticeship; Dispensing I and II Lecture and Dispensing I and II Lab; Principles of Optics (Theory of Optics); Anatomy and Physiology of the Eye; and Contact Lens Theory. Apprentices shall obtain a grade of either a "C," or better, or a numerical grade of 70, or better, in all required optical science courses.

(f) At the completion of the 36-month apprenticeship, the ophthalmic dispenser apprentice shall apply for the first scheduled ophthalmic dispenser licensing examination. In the event of illness, extreme emergency, or other good cause, an extension of application to the next succeeding examination may be granted by the Board.

(g) If the ophthalmic dispenser apprentice fails three consecutive ophthalmic dispenser licensing examinations, the apprentice dispenser shall return the dispenser permit to the Board. An ophthalmic dispenser apprentice who has returned his or her permit to the Board may retake the ophthalmic dispensing licensing examination provided that the last year of experience as an apprentice dispenser was acquired within the past two years.

(h) In the event that the ophthalmic dispenser apprentice meets the requirements to sit for examination and neither applies for, appears at, or is excused from said examination, an automatic failure will be imposed.

13:33-1.14 Ophthalmic technician apprentice; licensing examination

(a) An ophthalmic technician apprentice who has served as an apprentice for at least one calendar year of full-time employment shall apply for the first examination after the completion of the one year of full-time employment.

(b) In the event of illness, extreme emergency, or other good cause, an extension of application to the next succeeding examination may be granted by the Board.

(c) If the ophthalmic technician apprentice is unsuccessful in passing three consecutive examinations, the apprentice shall return the apprentice technician permit to the Board. An ophthalmic technician apprentice who has returned his or her permit to the Board may retake the ophthalmic technician licensing examination provided that the last year of experience as an apprentice technician was acquired within the past two years.

(d) In the event that the ophthalmic technician apprentice meets the requirements to sit for examination and neither applies for, appears at, or is excused from said examination, an automatic failure shall be imposed.

13:33-1.15 Review of examination

(a) An applicant who has failed the qualifying technical examination, the Ophthalmic Dispenser licensing examination or the Ophthalmic Technician licensing examination may apply to the Board for a review of his or her examination. The application shall be submitted, in writing, to the Executive Director of the Board within one month following notification of examination results.

(b) The Executive Director shall arrange a date for the applicant to review the deficiencies on his or her performance on the Board-generated portions of the examination with an examiner in the Board office. The Board-generated portions of the Qualifying Technical examination and the Ophthalmic Technician Licensing examination

are the neutralizing and shop portions. The Board-generated portions of the Ophthalmic Dispenser Licensing examination are the neutralizing, shop and dispensing sections.

(c) The Executive Director shall arrange for the testing service to forward to the applicant a summary of the written portion of the examination detailing the applicant's area of weakness.

(d) In the event an apprentice ophthalmic dispenser or technician fails the licensing examination for the second time, the apprentice shall obtain the Board's written approval of the preceptor under whose immediate supervision the apprentice intends to continue his or her apprenticeship.

13:33-1.16 Military service

Any licensee who is engaged in active duty in the military service of this country shall be required to renew his or her license to keep it in force, but shall not be required to pay the renewal fee for any year during which he or she is in the service. Notwithstanding a licensee's engagement in active duty, a licensee shall be required to meet all continuing education requirements within 12 months of returning to practice.

13:33-1.17 Ophthalmic dispenser: definition; scope of practice

(a) A licensed ophthalmic dispenser prepares and dispenses to the intended wearer lenses, spectacles, eyeglasses, appurtenances thereto, or contact lenses only if those preparations are based on a written prescription from a licensed physician or licensed optometrist. A licensed ophthalmic dispenser also duplicates or replaces existing lenses, spectacles, eyeglasses, appurtenances, or contact lenses.

(b) The following functions are within the scope of practice of a licensed ophthalmic dispenser:

1. Those activities performed by licensed ophthalmic technicians as set forth in N.J.A.C. 13:33-1.18(b);
2. The determination that the lenses, spectacles, eyeglasses or contact lenses prepared and dispensed comport with the prescription that corrects the patient's visual anomaly;
3. The analysis and interpretation of prescriptions and lens design;
4. The taking of interpupillary distances (distance and near) and bifocal, trifocal, and progressive placement measurements;
5. The selection and measurement of frames for facial contour: eye size, bridge size, temple length, frame shape, and frame style;
6. The fitting, adjusting, or adapting of eyewear to the face and eyes;
7. The dispensing of contact lenses pursuant to N.J.A.C. 13:33-4.1;
8. The mailing of completed eyeglasses pursuant to N.J.A.C. 13:33-1.28; and
9. The mailing of contact lenses pursuant to N.J.A.C. 13:33-4.1.

13:33-1.18 Ophthalmic technician: definition; scope of practice

(a) A licensed ophthalmic technician is one who has knowledge of optics, is skilled in the technique of producing and reproducing ophthalmic lenses and kindred products and mounting the same to supporting materials.

(b) The following functions are within the scope of practice of a licensed ophthalmic technician:

1. The reading and transposing of a prescription or work order for lenses;
2. The grinding of lenses; inspection of surface quality; determination of optical, mechanical, and geometric centers, prisms, lens powers, base curves, cross curves, cylinder location, multifocal lenses, progressive lenses, colors (tints and coatings), neutralization, optical cross, optical lens graph, power drum readings, and transposition;
3. The mounting of lenses in frames; evaluation of measurements and sizes (eye, vertical, horizontal, pupillary distances, bridge size, temple style, and length) and use of the boxing system;
4. The verification of the lens conformity to either the written prescription or to the lenses being duplicated using a lensometer, vertometer, or any other method of verifying prescriptions;

5. The inspection of a lens; locating of the appropriate meridians of power, centering and marking the lens, decentering of the lens for the major reference point, blocking the lens for edging, inserting lens in edger with pattern or without patternless edgers, determining appropriate size and bevel position; assessing safety bevels and crowning the lens, and performing bench alignment; and

6. Inspection of completed eyeglasses.

13:33-1.19 Renewal of registration certificates

All ophthalmic dispenser, ophthalmic technician and branch office registration certificates shall be renewed biennially. Renewals shall be returned to the Board on or before December 31, subject to the provisions of N.J.S.A. 52:17B-41.12. If the renewal is returned after the December 31 deadline, the renewal shall include a late fee pursuant to N.J.A.C. 13:33-1.41.

13:33-1.20 Replacement certificates of registration

If a licensee's certificate of registration has been lost or destroyed, the licensee may request that the Board provide a replacement certificate of registration. Such request shall be in writing, include the certificate replacement fee pursuant to N.J.A.C. 13:33-1.41 and the licensee shall certify on a Board-provided form that the certificate has been lost or destroyed and has not been given to another person.

13:33-1.21 (Reserved)

13:33-1.22 Failure to apply for licensure within two years of examination; reexamination required

If an applicant who has passed a licensing examination fails to apply for a license within two years of passing the examination, the applicant shall be required to retake the examination before applying for a license.

13:33-1.23 Change of name

(a) The Board shall issue a new registration certificate to any licensee whose name has been legally changed, upon receipt of:

1. Notarized copies of documentary evidence of a legal name change;
2. The return of the original certificate; and
3. The certificate replacement fee set forth in N.J.A.C. 13:33-1.41.

13:33-1.24 Application for examination

(a) Applications for examination shall be filed with the executive director of the Board at least 30 days prior to the date on which the examination is to be held.

(b) Applications shall include a certification from the preceptor certifying that the applicant has completed, or will complete by the time of examination, one year of apprenticeship for the Qualifying Technical examination and the Ophthalmic Technician licensing examination, and three years of apprenticeship for the Ophthalmic Dispensing licensing examination or four months of apprenticeship for applicants for the Ophthalmic Dispensing licensing examination who have an associates degree.

13:33-1.25 (Reserved)

13:33-1.26 Minimum age for ophthalmic dispenser's apprentice certificate—

Applicants for an ophthalmic dispenser's apprentice certificate shall be at least 17 years old.

13:33-1.27 Minimum age for ophthalmic technician's apprentice certificate

Applicants for an ophthalmic technician's apprentice certificate shall be at least 16 years old.

13:33-1.28 Mailing completed eyewear

(a) Upon request of a patient, a licensed ophthalmic dispenser may mail completed eyeglasses to the patient provided that the ophthalmic dispenser:

1. Has personally measured the patient for the eyeglasses to be dispensed;
2. Maintains a record of the prescription requirements and lens specifications; and
3. Assumes full responsibility for the accuracy and fit of the completed eyeglasses.

13:33-1.29 Record of prescriptions filled

(a) Each person licensed as an ophthalmic dispenser shall maintain for a period of at least six years at a New Jersey establishment the following records:

1. All prescriptions which the licensee or licensee's apprentices fill;
2. All data required in the preparation and dispensing of eyeglasses:
 - i. Frames, such as eye size, bridge size and temple length; and
 - ii. Lenses, such as sphere, cylinder, axis, prism base, add, patient pupillary distance (P.D.), eyeglass pupillary distance (P.S.) and height of segment (Seg) if multifocal, base curve, frame size, eye size, bridge size and temple length;
3. All information required in dispensing of contact lenses;
4. Identification, by means of name or initials, of individuals involved in interpreting and measuring, duplicating, fabricating, verifying and fitting and adjusting all eyeglasses, frames and lenses fabricated and dispensed; and
5. Written confirmation that the licensed dispenser or licensed technician has verified the lenses.

(b) In order to fabricate, verify, and/or duplicate a lens or a pair of eyeglasses, the following information shall be obtained or checked:

1. Sphere, cylinder, axis, prism, base, add, patient pupillary distance, eyeglass pupillary distance, height of segment, base curve, frame size, eye size, bridge size, and temple length.

(c) To obtain the information outlined in (b) above, the following equipment shall be utilized:

1. Lensometer, vertometer, or any other automatic electronic equipment to measure the power of a lens, a lens clock and a millimeter ruler.
2. Any person using the equipment listed in (c)1 above to obtain information for the purpose of fabricating, dispensing, verifying, or duplicating a lens or pair of eyeglasses shall be deemed to be practicing Ophthalmic Dispensing and Ophthalmic Technicianry.

13:33-1.30 Compliance with rules and regulations

(a) The employers of all ophthalmic dispensers, ophthalmic technicians, apprentices and persons working under temporary permits, shall be responsible to ensure that all relevant statutes and rules are observed and complied with in their establishments.

(b) It shall be the responsibility of the employer to ensure that each new employee secures authorization to work from the board, in the form of a permit, branch office license or transfer of licenses, before starting employment.

(c) It shall be the responsibility of the employer to see that all certificates of employees are displayed according to law.

13:33-1.31 Preparation of apprentice ophthalmic technicians for examination

(a) It shall be the responsibility of preceptors of apprentice ophthalmic technicians to provide instruction to apprentices in the following areas:

1. Reading and transposing of a prescription or order for lenses;

2. Knowledge of and fabrication of lenses. Specifically, grinding, processing, optical and geometrical centers, prisms, measurements, base curves, multifocal and colors (tints) of all types of lenses;
3. Knowledge of frames and mountings, sizes, measurements, and types of temples;
4. Using a vertometer, lensometer, or similar instrument;
5. Neutralizing and identifying a series of single vision and multifocal lenses; and one of the following:
 - i. Marking up and surfacing a pair of single vision or multifocal lenses from a pair of semifinished lens blanks; or
 - ii. Making a complete pair of eyeglasses, given a pair of uncut lenses and a frame or mounting.

13:33-1.32 Preparation of apprentice ophthalmic dispensers for examination

(a) It shall be the responsibility of preceptors of apprentice ophthalmic dispensers to provide instruction to apprentices in the following areas:

1. Reading and transposing prescriptions;
2. Knowledge and fabrication of lenses, specifically types of lenses, optical and geometrical centers, axes, prisms, powers, different types of glass, colors (tints), curves, grinding, neutralizing, transposing, and the purpose and use of lenses;
3. Familiarization with frames and mountings, sizes, measurements, and types of temples;
4. Using a vertometer, lensometer, or similar instrument;
5. Neutralizing and identifying a series of single vision and multifocal lenses; and one of the following:
 - i. Marking up and surfacing a pair of single vision or multifocal lenses from a pair of semifinished lens blanks; or
 - ii. Making a complete pair of eyeglasses, given a pair of uncut lenses and a frame or mounting;
6. Knowledge of measurements, pupillary distances and power of lenses;
7. Knowledge of fitting a pair of eyeglasses to a person; and
8. Knowledge of bench work and edge grinding in order to make a complete pair of eyeglasses, given a frame and uncut lenses.

13:33-1.33 Display of certificate of registration

(a) Every holder of a certificate of registration issued by the Board, including renewal certificates and validating certificates, shall display it to the public at the location for which it is issued.

(b) Renewal certificates and validating certificates shall be attached to the original certificate in the lower left-hand corner.

13:33-1.34 (Reserved)

13:33-1.35 Advertising

(a) An ophthalmic dispenser or ophthalmic technician may advertise; provided that the advertisement does not mislead or deceive the public or discredit others in the eye care field.

(b) Any advertisement, placed on or in newspapers, magazines, radio, television, flyers, on-premise signs, off-premise signs and the Internet which contains the price of corrective lenses, frames, complete corrective eyeglasses or the dispensing of contact lenses shall for each stated price:

1. Specify the type of lenses being offered, such as single vision, bifocal, trifocal, or progressive; whether they have tints or colorations; whether they are standard size or oversize; and of what material the lenses are made.
2. Specify the type of frame and the material from which it is made; and whether the frame advertised has been discontinued by the manufacturer.

(c) Where delivery time is advertised, any restrictions imposed upon such delivery shall be in a minimum of 10 point type and shall be placed adjacent to the indicated delivery time.

(d) Where warranties and guarantees are advertised, all exceptions to such warranty or guarantee shall be listed.

(e) Anyone who advertises the price of lenses, frames, complete corrective eyeglasses or dispensing of contact lenses shall answer telephone inquiries on the availability and the prices of the advertised ophthalmic items.

(f) The following practices shall be unlawful with respect to all advertisements.

1. The failure of an advertiser to maintain and offer for immediate purchase advertised merchandise in a quantity sufficient to meet anticipated consumer demand. When an advertisement states a specific period of time during which merchandise will be available for sale, such merchandise shall be made available to meet anticipated consumer demand during the stated period. When no stated period appears in the advertisement, a sufficient quantity of merchandise shall be made available to meet anticipated consumer demand during three consecutive business days commencing with the effective date of the advertisement. This paragraph shall not apply to merchandise which is advertised:

i. On an in-store sign only with no corresponding out-of-store sign;

ii. As being available in a specific quantity; or

iii. As being available in a "limited supply," pursuant to a "closeout sale" or pursuant to a "clearance sale" if such offering is represented to be permanently reduced, or the sale is one in which the advertiser offers for sale at a reduced price items of merchandise remaining at one or more specified locations which the advertiser will not have available for sale within a reasonable period of time after all such items have been sold;

2. The failure of an advertiser to specifically designate within an advertisement which merchandise items possess special or limiting factors relating to price, quality, condition or availability;

3. The failure to conspicuously post notice of advertised merchandise, on the business premises to which the advertisement applies, in proximity to the advertised merchandise or at all entrances to the business premises. Such notice may consist of a copy of the advertisement or may take the form of a tag attached to the merchandise or any sign with such terms as "sale," or "as advertised";

4. The use of any type, size, location, lighting, illustration, graphic depiction or color resulting in the obscuring of any material fact;

5. Describing the advertiser through the use of the terms "warehouse," "factory outlet," "discount," "bargain," "clearance," "liquidators," or other words or terms of similar meaning, whether in the advertiser's corporate, partnership or trade name or otherwise, where such terms do not reflect a bona fide description of the advertiser being described;

6. Whenever an advertiser provides a raincheck for an advertised item which is not available for immediate purchase, the failure to:

i. Honor or satisfy such raincheck within 60 days of issuance unless an extension of such time period is agreed to by the holder thereof;

ii. Give written or telephonic notice to the holder thereof when the merchandise is available and hold such merchandise for a reasonable time after giving such notice; and

iii. Offer a raincheck to all customers who are unable, due to the unavailability thereof, to purchase the advertised merchandise during the period of time during which the merchandise has been advertised as available for sale;

7. The making of false or misleading representations of facts concerning the reasons for, existence or amounts of price reductions, the nature of an offering or the quantity of advertised merchandise available for sale;

8. The failure of an advertiser to substantiate through documents, records or other written proof any claim made regarding the safety, performance, availability, efficiency, quality or price of the advertised merchandise, nature of the offering or quantity of advertised merchandise available for sale. Such records shall be made available upon request for inspection by the Board;

9. The use, directly or indirectly, of a comparison to a suggested retail price, inventory price, invoice price or similar terms that directly or indirectly compare or suggest a comparison between the cost of supply and the price at retail for the advertised merchandise; and

10. Use of the term “cost,” “wholesale” or other similar terms to describe an advertised price where such price is not equal to or less than the price per unit paid by the advertiser to the manufacturer or distributor of the merchandise.

(g) An advertiser advertising an item of merchandise specifically advertised for sale at a reduced price shall:

1. State the selling price or price range;
2. State the former price or price range or the amount of the reduction in dollars;
3. State with specificity in any price reduction advertisement the period of time during which the price reduction shall be applicable, unless the merchandise is advertised on an in-store sign with no corresponding out-of-store sign, or as being available in a specific quantity, or as being available in a “limited supply” pursuant to a “closeout sale” or a “clearance sale”;
4. Set forth the former price or price range or the amount of reduction in dollars in close proximity to the selling price or price range and the advertised item; and
5. Set forth the basis upon which the former price or price range or the amount of reduction in dollars was established in close proximity to the former price or price range of the advertised item. In this regard, terms such as “comparable value,” “our regular price,” or words of similar import shall be used to designate the basis for the former price.

(h) A former price or a selling price may be stated in terms of a price range when:

1. An advertiser operates more than one retail outlet at which advertised merchandise has been or will be available for purchase at different prices in the ordinary course of business. In such case, the price range shall be based upon the sales or offers of sale at the advertiser’s retail outlets; or
2. An advertiser advertises two or more items of comparable merchandise as available at reduced prices, in which case the price range shall be based upon former or usual selling prices of the advertised products.

(i) An advertiser offering merchandise for sale at a savings of a percentage shall set forth the basis upon which the former price was established in close proximity to the percentage reduction. In this regard, terms such as “our regular price” or words of similar import shall be used to designate the basis for the former price.

(j) An advertiser shall not use a fictitious former price in an advertisement. Use of a fictitious former price shall be deemed professional misconduct.

1. A former price or price range or the amount of reduction shall be deemed fictitious if it cannot be substantiated, through a showing of:

- i. Sales of the advertised merchandise, or comparable merchandise of like grade or quality, made within the advertiser’s trade area, the geographical area in which an advertiser solicits or makes a substantial number of sales, in the regular course of business at any time within 60 days prior to, or after, the effective date of the advertisement;
- ii. That the advertised merchandise, or comparable merchandise of like grade or quality, was offered for sale at that price within the advertiser’s trade area in the regular course of business during at least 28 days of a 90 day period before or after the effective date of the advertisement; or
- iii. That the price does not exceed the supplier’s cost plus the mark-up on the merchandise used by the advertiser in the regular course of business.

2. If the former price specifically references a time in the remote past during which it was offered, it shall be deemed fictitious unless substantiated pursuant to either (j) i or iii above.

(k) It shall be unlawful to advertise or employ displays in such a manner as to suggest, infer or indicate that persons licensed under N.J.S.A. 52:17B-41.1 et seq. are qualified to give professional advice concerning eye care or perform eye examinations.

(l) Licensees may advertise eye examinations provided they state that the examination is performed by an independent doctor of optometry or ophthalmologist.

(m) Any advertisement shall include the telephone number and street address of the business.

13:33-1.36 Space rental agreements with other health care practitioners

(a) A Board licensee may rent space to or from a person authorized by law to prescribe corrective or therapeutic eyewear or from a separately held entity in which said person and/or his or her immediate family hold any financial interest, only where the total rent to be paid is set forth in a written agreement and such rent is for a fixed dollar amount for a stated period of time determined by the fair market value for the rented space. The rent shall not be determined by the number of referrals made or by volume of sales or fees.

(b) The term “immediate family,” for the purpose of this section, means the spouse and children, siblings and parents, spouse’s siblings and parents, and the spouses of the children of the person authorized by law to prescribe corrective or therapeutic eyewear.

13:33-1.37 Prohibition on rebates and commissions for referring patients-

(a) An ophthalmic dispenser or ophthalmic technician may recommend an ophthalmologist or optometrist to patients.

(b) It shall be unlawful for any ophthalmic dispenser or ophthalmic technician or employee or agent thereof or any other person on their behalf to offer to pay a rebate or commission in any form whatsoever to, or receive a rebate or commission from, any physician, optometrist, or any other person in return for referring patients to anyone licensed under N.J.S.A. 52:17B-41.1 et seq.

13:33-1.38 Minimum standards and tolerances

(a) Every prepared pair of lenses, spectacles, eyeglasses or appurtenances thereto dispensed to the intended wearers thereof on written prescriptions from physicians or optometrists duly licensed to practice their profession, or duplication, replacement, reproduction or repetitions, must conform to the following minimum standards and tolerances:

Physical Quality and Appearance

Tolerance

- | | |
|--|--|
| 1. Surface imperfections | No pits, scratches (other than hairline), grayness or watermarks shall be acceptable. |
| 2. Glass defects | No bubbles, striae and inclusions shall be acceptable. |
| 3. Localized power errors | Waves found by visual inspection shall be passable if no deterioration in image quality if found when the localized area is examined with a standard lens measuring instrument. |
| 4. Refractive powers | 0.0 to 6.00 + or - 0.12. 6.25 to 12.00 2 percent of power. Above 12.00 + or - 0.25. Maximum cylinder power variation + or - 0.12. |
| 5. Refractive power addition | + or - 0.12.0 |
| 6. Cylinder Axis | 0.12 to 0.37 + or - 3 degrees. 0.50 to 1.00 + or - 2 degrees. |
| 7. Prism power and location of specified optical center | Vertical + or - 0.25 prism for each lense or a total of 1/3 prism imbalance. Horizontal + or - 0.25 prism for each lens or a total of 0.50 prism diopter imbalance; if prism exceeds .50 prism diopter, the optical centers must be within 2 mm. If prism is less than .50 prism diopter, the optical centers must be within 4 mm. |
| 8. Segment size | + or - 0.5 mm. Pair must be symmetrical upon visual inspection. |
| 9. Segment location | As specified within + or - 0.5 mm. |
| 10. Lens size:
i. for metal frames
must match. Edges must be smooth and straight and sharp edge must be removed. | Rimlessii. Bevel, for plastic framesiii. Bevel, To fit standard specified frame.Lens shape must match. |
| 11. Heat-treated and chemically-treated industrial safety eyewear | Tolerance for power, size and the like shall be as above, except that minimum thickness edge or center shall meet the requirements of American Standard Z80.1-1972 and subsequent revisions. |

12. Heat-treated and chemically-treated dress eyewear Tolerance for power, size and the like shall be as above, except that minimum thickness edge or center shall meet the requirements of American Standard Z80.1-1972 and subsequent revisions.
13. Frame selection and fit Frame shall be selected for the requirements of the prescription and facial contour. Bridge size should fit the nose within 2 mm of its width with flair, and temple length must fit within 5 mm.

(b) In order to insure the proper fabrication of lenses and eyewear, the following information must be obtained from the refractionist:

1. Complete prescription, including sphere, cylinder, axis, prism/base and add;
2. The ophthalmic dispenser must measure and/or specify the following:
 - i. Eye size, bridge size, temple length, frame shape and style, patient pupillary distance, optical centers and, if applicable, bifocal type, segment height and base curve;
3. Upon completion of the fabrication of such corrective lenses and prior to dispensing within the State of New Jersey, the lenses or finished eyeglasses shall be verified to insure the accuracy of the prescription, the sphere, cylinder, axis, prism/base, add, patient pupillary distance, segment height, frame size, eye size, bridge size and temple length. In addition, the eyewear must be adjusted for fit and verified for compliance with the standards, set forth in (a) above.

13:33-1.39 Permits: registration

(a) Any employer, before he permits a new employee to start work as a temporary ophthalmic dispenser, temporary ophthalmic technician, ophthalmic dispenser apprentice, or ophthalmic technician apprentice is responsible for registering said employee under the applicable permit.

(b) "Registration" means filing a notarized application with the Board for any temporary ophthalmic dispenser, temporary ophthalmic technician, ophthalmic dispenser apprentice, or ophthalmic technician apprentice that works in an ophthalmic establishment and receipt by the applicant of a permit or letter of permission to work from the Board.

(c) The employer shall conspicuously post in all optical establishments a sign, which shall be supplied by the Board, stating that the employer is responsible for the registration of all employees.

13:33-1.40 Full calendar year; week

A full calendar year shall consist of 12 months of compensated employment. A working week shall consist of no less than 32 hours.

13:33-1.41 Fee schedule

(a) The following fees shall be charged by the Board effective upon promulgation.

1. Application fee.....\$100.00
2. Examination:
 - i. Ophthalmic Dispenser.....75.00
 - ii. Ophthalmic Technician.....50.00
 - iii. Qualifying Technical.....50.00
3. Initial license fee:
 - i. Ophthalmic Dispenser:
 - (1) During the first year of a biennial renewal period.....230.00
 - (2) During the second year of a biennial renewal period.....115.00
 - ii. Ophthalmic Technician:
 - (1) During the first year of a biennial renewal period.....175.00
 - (2) During the second year of a biennial renewal period.....87.50

- iii. Branch Office Ophthalmic Dispenser:
 - (1) During the first year of a biennial renewal period.....165.00
 - (2) During the second year of a biennial renewal period.....82.50
- iv. Branch Office Ophthalmic Technician:
 - (1) During the first year of a biennial renewal period.....110.00
 - (2) During the second year of a biennial renewal period.....55.00
- 4. Biennial renewal:
 - i. Ophthalmic Dispenser.....230.00
 - ii. Ophthalmic Technician.....175.00
 - iii. Branch Office Ophthalmic Dispenser.....165.00
 - iv. Branch Office Ophthalmic Technician.....110.00
- 5. Permits and permit renewals:
 - i. Temporary.....50.00
 - ii. Apprentice Dispenser.....50.00
 - iii. Apprentice Technician.....50.00
- 6. Late renewal of license or permit.....100.00
- 7. Late application for licensure.....100.00
- 8. Replacement certificate of registration:
 - i. License.....50.00
 - ii. Branch Office License.....50.00
 - iii. Permit.....30.00
- 9. Continuing education sponsor fee (biennial).....100.00

13:33-1.42 Identification tags

Each licensee and permit holder shall wear an identification tag, which shall be clearly visible to the patient at all times. The tag shall bear the first name or initial, the full second name, the license or permit number, and the level of licensure. The letters on the tag shall be in type not smaller than 1/4 inch.

13:33-1.43 Continuing education requirements

(a) An ophthalmic dispenser shall indicate on the license renewal form that he or she has completed the continuing education requirements as outlined in (b) below. Ophthalmic dispensers applying for their first biennial renewal are exempt from this mandatory continuing education requirement.

(b) Each ophthalmic dispenser licensed by the Board shall successfully complete 12 credits per biennial period of approved continuing education course work, of which three such credits shall be in the dispensing of contact lenses in compliance with N.J.A.C. 13:33-3.2. One credit shall equal one hour of attendance at an approved course. Two credits may be carried over into a succeeding biennial period only if earned during the last six months of the preceding biennial period.

(c) The ophthalmic dispenser shall maintain sponsor verifications that he or she has completed the continuing education courses as part of his or her records for a period of four years. Falsification of sponsor verifications may result in an appearance before the Board, penalties and/or disciplinary action. The Board may request a review of an ophthalmic dispenser's continuing education records at any time. Any ophthalmic dispenser who is unable to verify that he or she has completed the continuing education requirements shall be subject to disciplinary action.

(d) The Board may waive the requirements of this section on an individual basis in cases of certified illness or undue hardship.

(e) The Board shall approve only such continuing educational programs as are available on a reasonable nondiscriminatory basis to all persons practicing ophthalmic dispensing in the State. The Board shall maintain a list of all approved courses and lecturers at the Board offices and shall furnish this information to licensees upon request. Courses to be approved for the continuing education requirement shall be in areas of ophthalmic science, study related to the human eye and its care, or such other areas of opticianry education as the Board shall designate. Speakers, lecturers and others participating in the presentation of programs shall be recognized as possessing requisite qualifications and being of recognized repute in their area of instruction.

(f) Any person desiring approval as a sponsor of a continuing education course, seminar or program shall:

1. Complete and submit the written application form provided by the Board. The application form will elicit descriptive information concerning the course offering, such as:
 - i. The name and address of sponsoring organization and the name of individual filing application;
 - ii. The title and a complete description of course offering;
 - iii. The date, time (beginning and end) and place of course offering;
 - iv. Curriculum vitae of each speaker; and
 - v. The mechanism to be used to assess program value.
2. Secure Board approval prior to offering any continuing education course, seminar or program and prior to representing that any course, seminar or program fulfills the requirements of this section;
3. Notify all licensees of the time, place and date of the course being offered; and
4. Monitor the attendance at each approved course and furnish to each enrollee a verification of attendance.

(g) An ophthalmic dispenser on inactive status who seeks to reactivate his or her license shall submit proof to the Board of successful completion of 12 credits of approved continuing education course work, three of which shall be in the dispensing of contact lenses, for each biennial period of approved inactive status.

13:33-1.44 Sexual misconduct

(a) The purpose of this section is to identify for licensees conduct which the Board of Ophthalmic Dispenser and Technicians deems sexual misconduct.

(b) As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:

“Licensee” means any person licensed by or registered with the Board of Ophthalmic Dispenser and Technicians.

“Patient” means any person who is the recipient of a professional service rendered by a licensee for purposes of obtaining contact lenses, eyeglasses or a consultation relating to ophthalmic services. “Patient” for purposes of this section also means a person who is the subject of professional evaluations.

“Patient-practitioner relationship” means an association between a practitioner and patient wherein the practitioner owes a continuing duty to the patient to be available to render professional services consistent with his or her training and experience and the performance of any professional ophthalmic service including, but not limited to, the interpretation of a prescription, taking facial and visual measurements, final fitting and adjusting of the finished product.

“Sexual contact” means the knowing touching of a person’s body directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the licensee’s own prurient interest or for sexual arousal or gratification.

“Sexual contact” includes, but is not limited to, the imposition of a part of the licensee’s body upon a part of the patient’s body, sexual penetration, or the insertion or imposition of any object or any part of a licensee or patient’s body into or near the genital, anal or other opening of the other person’s body.

“Sexual harassment” means solicitation of any sexual act, physical advances, or verbal or non-verbal conduct that is sexual in nature, and which occurs in connection with a licensee’s activities or role as a provider of ophthalmic services, and that either: is unwelcome, offensive to a reasonable person, or creates a hostile workplace environment, and the licensee knows, should know or is told this; or is sufficiently severe or intense to be abusive to a reasonable person in that context. “Sexual harassment” may consist of a single extreme or severe act or of multiple acts and may include, but is not limited to, conduct of a licensee with a patient, co-worker, employee, student or supervisee whether or not such individual is in a subordinate position to the licensee. “Sexual harassment” may also include conduct of a nonsexual nature if it is based on the sex of an individual.

“Spouse” means the husband, wife, fiancé or fiancée of the licensee or an individual in a long-term committed relationship with the licensee. For the purposes of the definition of “spouse” a long term committed relationship means a relationship which is at least six months in duration.

(c) A licensee shall not engage in sexual contact with a patient with whom the licensee has a patient-practitioner relationship. The patient-practitioner relationship is considered ongoing for purposes of this section, unless:

1. Terminated by way of written notice to the patient and documented in the patient record; or
2. The last professional service rendered by the practitioner to the patient was more than six months ago.

(d) A licensee shall not seek or solicit sexual contact with a patient with whom he or she has a patient-practitioner relationship and shall not seek or solicit sexual contact with any person in exchange for professional services.

(e) A licensee shall not engage in any discussion of an intimate sexual nature with a patient, including disclosure by the licensee of his or her own intimate sexual relationships.

(f) A licensee shall not engage in sexual harassment, whether in a professional setting such as an office, hospital, residence or health care facility, or outside of the professional setting.

(g) A licensee shall not engage in any other activity, such as, but not limited to, voyeurism or exposure of the genitalia of the licensee which would lead a reasonable person to believe that the activity serves the licensee's personal prurient interest or is for the sexual arousal, the sexual gratification or the sexual abuse of the licensee or patient.

(h) Violation of any of the prohibitions or directives set forth at (c) through (g) above shall be deemed to constitute gross or repeated malpractice pursuant to N.J.S.A. 45:1-21(c) or (d) or professional misconduct pursuant to N.J.S.A. 45:1-21(e).

(i) Nothing in this section shall be construed to prevent a licensee from rendering professional services to a spouse, providing that the rendering of such service is consistent with accepted standards of professional care.

(j) It shall not be a defense to any action under this section that:

1. The patient solicited or consented to sexual contact with the licensee; or
2. The licensee was in love with or had affection for the patient.

SUBCHAPTER 2. EQUIPMENT

13:33-2.1 Minimum optical equipment in establishments where apprentices are registered and/or where fabricating is done on the premises

(a) All optical establishments where apprentices are registered or where fabricating is done on the premises, shall be equipped with the following optical equipment:

1. One set of hand tools consisting of files, screwdrivers, pliers, hammers/anvils or hand press, reamers, taps, calipers and millimeter ruler;
2. One automatic lens analyzer, such as a lensometer, vertometer, or any other automatic electronic equipment to measure the power of a lens and lens clock;
3. Hand or automatic protractor for marking up lenses;
4. One colmascope;
5. One frame heater;
6. One automatic edger and hand finishing stone;
7. A minimum of 250 assorted frames and mountings; and
8. If the establishment fabricates glass lenses on the premises, lens hardening equipment and a drop ball tester.

13:33-2.2 Optical equipment required for practice of ophthalmic dispensing in establishments where no fabricating is done on premises and where no apprentices are registered

(a) All optical establishments where ophthalmic dispensers practice and where no fabricating is done on the premises and no apprentices are registered, shall be equipped with the following optical equipment:

1. One set of hand tools consisting of files, screwdrivers, pliers, hammers/anvils or hand press, reamers, taps, calipers and a millimeter ruler;
2. One automatic lens analyzer, such as a lensometer, vertometer, or any other automatic electronic equipment to measure the power of a lens and lens clock
3. One colmascope;
4. One frame heater;
5. One hand finishing stone; and
6. A minimum of 250 assorted frames and mountings.

(b) All optical establishments that do not have a laboratory on the premises shall conspicuously display to the public a sign stating, "No laboratory on the premises." The size of the sign shall be a minimum of eight inches by 10 inches.

SUBCHAPTER 3. DISPENSING OF CONTACT LENSES

13:33-3.1 Dispensing of contact lenses

(a) An ophthalmic dispenser may dispense contact lenses directly to a patient upon presentation of a valid contact lens prescription written by a licensed optometrist or physician. The prescription shall contain the name, address and phone number of the prescriber.

(b) An ophthalmic dispenser may only replace, reproduce or duplicate a previously dispensed contact lens based upon a prescription or the specifications of record, which are the specific characteristics of the contact lens taken from the prescription.

(c) Contact lenses shall be dispensed upon the following conditions:

1. Dispensing shall only be performed by a licensed ophthalmic dispenser. Under no circumstances may dispensing be delegated to an unlicensed person.

2. Any contact lenses dispensed shall be in exact conformity with the prescription presented and shall be dispensed only to the person named on the prescription. The licensed ophthalmic dispenser shall not alter or substitute the lenses prescribed.

3. A licensed ophthalmic dispenser who dispenses contact lenses shall provide the following information to the patient whenever contact lenses are dispensed:

WARNING: IF YOU ARE HAVING ANY UNEXPLAINED EYE DISCOMFORT, WATERING, VISION CHANGE, OR REDNESS, REMOVE YOUR LENSES IMMEDIATELY AND CONSULT YOUR EYE CARE PRACTITIONER BEFORE WEARING YOUR LENSES AGAIN.

4. Under no circumstances shall contact lenses be dispensed after the expiration date stated on the prescription or, if there is no expiration date, more than two years after the date that the prescription was originally written.

5. A licensed ophthalmic dispenser shall not dispense to a patient contact lenses when the seals on the contact lens container have been opened.

(d) Concurrent with the dispensing of contact lenses, an individual patient record shall be created and be maintained for a period of seven years from the date of the last entry in the record, and shall contain the following information:

1. A copy of any prescriptions for which contact lenses are dispensed;
2. The patient's name, address and telephone number;
3. The date on which the contact lenses were dispensed; and
4. The identity and initials of the licensed ophthalmic dispenser who dispensed the contact lenses.

(e) A licensed ophthalmic dispenser may mail contact lenses to a patient pursuant to a valid prescription provided:

1. The ophthalmic dispenser maintains a record of the prescribing eye doctor's name, address and telephone number and an original, or copy of the, patient's prescription or lens specifications, which includes the following information:

- i. The name of the manufacturer;
- ii. The brand name;
- iii. The lens power;
- iv. The base curve;
- v. The diameter; and

2. The prescription has not expired pursuant to an expiration date stated by the prescribing eye doctor and the prescription or specifications of record are not more than two years old.

(f) A licensee who dispenses contact lenses without satisfying the conditions and limitations prescribed by this section shall be deemed to have engaged in professional misconduct.

13:33-3.2 Continuing education for dispensing of contact lenses

(a) During each biennial registration period, a licensed ophthalmic dispenser shall complete pursuant to N.J.A.C. 13:33-1.43, a continuing education course of at least three classroom hours covering the dispensing of contact lenses. Such course shall include, at a minimum, instruction in the following areas related to contact lenses:

1. Analysis and interpretation of prescriptions and specifications for contact lenses;
2. Preparation of orders, fabrication of contact lenses, lens care and maintenance and use of lens containers and solutions;
3. Instruction of patients in the proper insertion, removal and use of contact lenses; and
4. Innovative techniques in contact lenses and their dispensing.

CHAPTER 45C UNIFORM REGULATIONS

SUBCHAPTER 1. LICENSEE DUTY TO COOPERATE AND TO COMPLY WITH BOARD ORDERS

13:45C-1.1 Applicability, scope and definitions

(a) This subchapter shall apply to all licensees of any board, committee or sub-unit within the Division of Consumer Affairs.

(b) For the purpose of this subchapter, "licensee" shall mean any licensee, permittee, certificate holder or registrant of:

1. The Division of Consumer Affairs;
2. Any professional or occupational licensing board within the Office of Professional/Occupational Boards and any committee, or other subunit of a board or committee located within the Division;
3. The Office of Consumer Protection; or
4. The Legalized Games of Chance Control Commission.

13:45C-1.2 Licensee's duty to cooperate in investigative inquiries

(a) A licensee shall cooperate in any inquiry, inspection or investigation conducted by, or on behalf of, a board, the Director or the licensee's licensing agency into a licensee's conduct, fitness or capacity to engage in a licensed profession or occupation where said inquiry is intended to evaluate such conduct, fitness or capacity for compliance with applicable statutory or regulatory provisions.

(b) A licensee's failure to cooperate, absent good cause or *bona fide* claim of a privilege not identified in N.J.A.C. 13:45C-1.5 as unavailable, may be deemed by the board, the Director, or the licensing agency to constitute professional or occupational misconduct within the meaning of N.J.S.A. 45:1-21(e) or the agency's enabling act and thus subject a licensee to disciplinary action pursuant to N.J.S.A. 45:1-21(h) or the agency's enabling act.

13:45C-1.3 Specific conduct deemed failure to cooperate

(a) The following conduct by a licensee may be deemed a failure to cooperate and, therefore, professional or occupational misconduct and grounds for suspension or revocation of licensure:

1. The failure to timely respond to an inquiry to provide information in response to a complaint received concerning licensee conduct;
2. The failure to timely provide records related to licensee conduct;
3. The failure to attend any scheduled proceeding at which the licensee's appearance is directed. In the event that a licensee elects to retain counsel for the purpose of representation in any such proceeding, it shall be the licensee's responsibility to do so in a timely fashion. The failure of a licensee to retain counsel, absent a showing of good cause therefor, shall not cause an adjournment of the proceeding;
4. The failure to timely respond or to provide information requested pursuant to a demand under N.J.S.A. 45:1-18 or other applicable law or to provide access to any premises from which a licensed profession or occupation is conducted. Included within this paragraph shall be the failure to respond to any demand for statement or report under oath, the failure to permit the examination of any goods, ware or item used in the rendition of the professional or occupational service and the failure to grant access to records, books or other documents utilized in the practice of the occupation or profession;
5. The failure to answer any question pertinent to inquiry made pursuant to N.J.S.A. 45:1-18 or other applicable law unless the response to said question is subject to a
bona fide claim of privilege;
6. The failure to make proper and timely response by way of appearance or production of documents to any subpoena issued pursuant to N.J.S.A. 45:1-18 or as may otherwise be provided by law; or
7. The failure to provide to the Board, the Director or the licensing agency timely notice of any change of address from that which appears on the licensee's most recent license renewal or application.

13:45C-1.4 Failure to comply with Board orders as professional or occupational misconduct

The failure of a licensee to comply with an order duly entered and served upon the licensee or of which the licensee has knowledge shall be deemed professional or occupational misconduct.

13:45C-1.5 Unavailability of privileges in investigative or disciplinary proceedings

(a) In any investigative inquiry conducted pursuant to N.J.S.A. 45:1-18 or in any disciplinary proceeding conducted pursuant to N.J.S.A. 45:1-21, or as may otherwise be authorized by law, the physician-patient privilege, psychologist-patient privilege, marriage and family therapist-client privilege, professional counselor-client privilege, associate counselor-client privilege, social worker-client privilege and the alcohol and drug counselor-client privilege shall be unavailable.

(b) Any statements or records otherwise subject to a claim of the stated privileges which may be obtained by the Board, its agent or the Attorney General pursuant to N.J.S.A. 45:1-18 shall remain confidential and shall not be disclosed unless so ordered by a court of competent jurisdiction, the appropriate licensing board or the Office of Administrative Law in a contested case.

13:45C-1.6 Maintenance of and access to statements, records or other information that is subject to a privilege declared unavailable

(a) Any statements, records or other information which may be subject to any privilege declared unavailable in this subchapter shall be maintained in a secure place and manner by:

1. The evidence custodian within the Division of Consumer Affairs, Enforcement Bureau;

2. The professional or occupational licensing board and the committee or other subunit of a board or committee located within the Division which has a direct connection with, or a need for access to, the matter to which the statements, records or other information pertain; or

3. A Deputy Attorney General.

(b) Except as may be otherwise ordered as provided in the subchapter, access to statements, records or other information shall be afforded only to employees of the Attorney General, the Enforcement Bureau, or the Board or other subunit of the Division having a direct connection with, or a need for access to, the matter to which the statement, records or other information pertain.

(c) The statements, records or other information shall be retained only for the period of time during which an investigation remains open or until the completion of all administrative or judicial proceedings relating thereto, at which time they shall be returned to the licensee or other person from whom they were obtained. In the absence of such licensee or other person, the statements, records or other information shall be returned to the patient, where appropriate.

As of October 2001

Internet - 4/9/02